IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	**Chapter 11**
LL FLOORING HOLDINGS, INC., *et al.*,	**Case No. 24-11680 (BLS)**
Debtors.[1]	**(Jointly Administered)**
	Related Docket Nos. 16, 17, and 37

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 ABL PARTIES, (V) MODIFYING AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion (the "DIP Motion") of LL Flooring, Inc. and each of its above-captioned affiliates (collectively, the "Debtors") in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"), seeking entry of an interim order (this "Interim Order") and a final order (the "Final Order") pursuant to sections 105, 361, 362, 363, 364(c)(l), 364(c)(2), 364(c)(3), 364(d), 364(e), 507 and 552 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1(b), 4001-2 and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), *inter alia*:

(i) authorizing the Debtors to obtain senior secured, superpriority, postpetition financing on a superpriority basis consisting of a senior secured superpriority revolving credit facility in the aggregate principal amount of up to $130 million

[1] The Debtors in these chapter 11 cases, along with the last four (4) digits of their respective tax identification numbers, are as follows: LL Flooring Holdings, Inc. (0817); LL Flooring, Inc. (9199); Lumber Liquidators Leasing, LLC (N/A); LL Flooring Services, LLC (5960); and Lumber Liquidators Foreign Holdings, LLC (4568). The address of the Debtors' corporate headquarters is 4901 Bakers Mill Lane, Richmond, VA 23230.

(the "DIP ABL Facility," and all amounts extended thereunder, the "DIP Revolving Loans"), which will include a $12 million sublimit for the issuance of letters of credit, and will provide for (a) "rolling up" of approximately $10.6 million in aggregate principal amount of existing letters of credit issued under the Prepetition ABL Facility (as defined herein) into the DIP ABL Facility, along with Secured Bank Services (as defined herein) and (b) refinancing of the Prepetition ABL Facility pursuant to a "creeping roll up" mechanic whereby collections of collateral pay down principal on prepetition revolving loans, and any and all remaining outstanding Prepetition ABL Obligations (as defined herein) and all accrued and unpaid interest thereon and fees and expenses shall be fully "rolled" into the DIP ABL Facility and shall constitute DIP ABL Obligations (as defined herein) upon the entry of the Final Order, in each case 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 LL Flooring, Inc., as the lead borrower, each of the other Debtors party thereto as a borrower and/or a guarantor, as applicable, and Bank of America, N.A., as administrative agent and as collateral agent (in such capacities, together with its successors and permitted assigns in such capacities, the "DIP ABL Agent") for and on behalf of itself and the other lenders, and letter of credit issuers party thereto and the providers of Secured Bank Services (collectively with the DIP ABL Agent, the "DIP ABL Lenders"), substantially in the form of **Exhibit B**, attached hereto;

(ii) 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, mortgages, intellectual property security agreements, control agreements, or notes, in each case, 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, subject and subordinate to the Carve-Out (as defined herein), to the DIP ABL Agent, for the benefit of itself and the DIP ABL Lenders on account of the DIP ABL Facility and all obligations owing thereunder and under, or secured by the DIP ABL Documents (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 Chapter 11 Cases and any Successor Cases (as defined herein);

(iv) granting, subject and subordinate to the Carve-Out, to the DIP ABL Agent, for the benefit of itself and the DIP ABL Lenders under the DIP ABL 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;

(v) authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP ABL Documents as such become earned, due, and payable including, without limitation, 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, arrangement fees, upfront fees, administrative agent's fees, the reasonable fees and disbursements of the DIP ABL Agent's attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with the DIP ABL Documents;

(vi) authorizing the Debtors to use, on the terms described herein, the DIP Revolving Loans and the Prepetition Collateral (as defined herein), including the Cash Collateral of the Prepetition ABL Parties under the Prepetition ABL Documents (each as defined herein);

(vii) providing adequate protection to the Prepetition ABL Parties for any diminution in value of their interests in the Prepetition Collateral (as defined herein), including Cash Collateral, for any reason provided for under the Bankruptcy Code, including the imposition of the automatic stay, the Debtors' use, sale, or lease of the Prepetition Collateral, including Cash Collateral, and the priming of their respective interests in the Prepetition Collateral (including by the Carve-Out) pursuant to the terms and conditions set forth herein (collectively, the "Diminution in Value");

(viii) 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 ABL Documents and this Interim Order;

(ix) scheduling a final hearing (the "Final Hearing") to consider the relief requested in the DIP Motion, on a final basis, and approving the form of notice with respect to the Final Hearing; and

(x) granting related relief.

The Court (as defined herein) having considered the DIP Motion, the exhibits attached thereto, the First Day Declaration (as defined in the DIP Motion) [Docket No. 11], the Declaration of Surbhi Gupta in support of the DIP Motion [Docket No. 17] (the "Gupta Declaration"), the DIP ABL Documents, and the evidence submitted and argument made at the interim hearing held on August 13, 2024 (the "Interim Hearing"); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), 9014, and all applicable 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' business and the maximization of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP ABL Agreement 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:[2]

A. **Petition Date**. On August 11, 2024 (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 District of Delaware (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 Chapter 11 Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157

[2] 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.

and 1334. Venue for the Chapter 11 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 for the District of Delaware (the "U.S. Trustee") has not appointed an official committee of unsecured creditors in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (to the extent appointed in the Chapter 11 Cases, a "Committee").

E. **Notice**. The Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Proper, timely, adequate, and sufficient notice, under the circumstances, of the DIP Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

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 35 herein, the Debtors admit, stipulate, acknowledge, and agree as follows (paragraphs F(i) through F(viii) below are referred to herein, collectively, as the "Stipulations"):

(i) *Prepetition ABL Facility*. Pursuant to that certain Fourth Amended and Restated Credit Agreement dated as of March 29, 2019 (as amended, restated, supplemented, or otherwise modified from time to time prior to the Petition Date, 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"), by and among LL Flooring, Inc., as the lead borrower, each of the other Debtors party thereto as a borrower and/or a guarantor, as applicable, the lenders from time to time party thereto (collectively, the "Prepetition ABL Lenders" and,

together with the other Credit Parties (as defined in the Prepetition ABL Agreement, the "Prepetition ABL Parties") and Bank of America, N.A., as administrative agent and as collateral agent (in such capacities, together with its successors and permitted assigns in such capacities, the "Prepetition ABL Agent"), the Prepetition ABL Lenders provided revolving loans and other financial accommodations to, and issued letters of credit for the account of the Debtors pursuant to the Prepetition ABL Documents (the "Prepetition ABL Facility").

(ii) *Prepetition ABL Obligations*. The Prepetition ABL Facility provided the Debtors with, among other things, an asset-based revolving credit facility with a maximum availability of $200 million (which includes a letter of credit sub-facility up to a maximum available amount of $20 million), subject to conditions under the revolving borrowing base. The Prepetition ABL Agreement also permits the Debtors to grant security interests in support of the obligations of the Debtors owing to the Prepetition ABL Lenders providing "Bank Products", "Cash Management Services" or "Swap Contracts" (in each case, as such term is defined in the Prepetition ABL Agreement; collectively, the "Secured Bank Services"). As of the Petition Date, the aggregate principal amount outstanding under the Prepetition ABL Facility was approximately $99.0 million in outstanding revolving loans and approximately $10.6 million in issued and outstanding letter of credit obligations (collectively, together with accrued and unpaid interest, any reimbursement obligations (contingent or otherwise) in respect of letters of credit, any fees, expenses and disbursements (including, without limitation, 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 Debtors' obligations pursuant to, or secured by, the Prepetition ABL Documents, including all "Obligations" as defined in the Prepetition ABL Agreement, and all interest, fees (including amendment fees), prepayment premiums, costs and other charges allowable under section 506(b) of the Bankruptcy Code, the "Prepetition ABL Obligations").

(iii) *Prepetition ABL Liens and Prepetition Collateral*. As more fully set forth in the Prepetition ABL Documents and the DIP Motion, prior to the Petition Date, the Debtors granted to the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Parties, a first priority security interest in and continuing lien (the "Prepetition ABL Liens") on the "Collateral" (as defined in the Prepetition ABL Agreement), which includes substantially all of the assets of the Debtors and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising, subject only to the Permitted Prior Liens (as defined herein) (collectively, the "Prepetition Collateral").

(iv) *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 certain liens senior by operation of law (solely to the extent such liens were valid, non-avoidable, and senior in priority to the Prepetition ABL Liens as of the Petition Date and properly perfected prior to the Petition Date or perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) or otherwise permitted by the Prepetition ABL Agreement (the

"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, without limitation, 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, without limitation, 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 Prepetition ABL Liens; and (g) the aggregate value of the Prepetition Collateral exceeds the amount of the Prepetition ABL Obligations and the claims of the Prepetition ABL Parties arising under, or secured by, the Prepetition ABL Documents constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(v) *No Control.* None of the DIP ABL Agent, the DIP ABL Lenders or the Prepetition ABL Parties controls the Debtors or their properties or operations, has authority to determine the manner in which any of the Debtors' operations are conducted or is a control person or insider of the Debtors or any of their affiliates by virtue of any of the actions taken with

respect to, in connection with, related to, or arising from this Interim Order, the DIP ABL Facility, the DIP ABL Documents, the Prepetition ABL Facility, and/or the Prepetition ABL Documents.

(vi) *Release*. Effective as of the date of entry of the Final Order granting such relief, each of the Debtors and (subject to the provisions of paragraph 35 hereof) each of their estates, on its own behalf and on behalf of its and their respective predecessors, successors, heirs, and past, present and future subsidiaries and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits the Prepetition ABL Parties, the DIP ABL Agent, the DIP ABL Lenders and each of their respective affiliates and each of their former, current, or future officers, partners, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (collectively, the "Released Parties" and, each, a "Released Party"), from any and all liability to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature and description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, in each case arising out of or related to the Prepetition ABL Documents, the Prepetition ABL Facility, the DIP ABL Facility, the DIP ABL Documents, the Creeping Roll-Up (as defined below), the negotiation thereof and the transactions and agreements reflected thereby, that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter may have against any of the Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the date of this Interim Order; *provided that*

nothing herein releases (A) the DIP ABL Agent and the DIP ABL Lenders from their obligations under the DIP ABL Documents or (B) any claims against or liabilities of a Released Party that a court of competent jurisdiction determines by a final non-appealable order to have resulted from such Released Party's bad faith, fraud, gross negligence or willful misconduct.

(vii) *Cash Collateral*. All of the Debtors' cash, including any cash in deposit accounts of the Debtors, wherever located, constitutes Cash Collateral of the Prepetition ABL Parties.

(viii) *Default by the Debtors.* The Debtors acknowledge and stipulate that they are in default of their obligations under the Prepetition ABL Documents, including as a result of the Chapter 11 Cases, and that an Event of Default (as defined in the Prepetition ABL Agreement) has occurred and is continuing to occur under the Prepetition ABL Documents. As of the Petition Date, therefore, interest is accruing on the Prepetition ABL 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 Agent, the Prepetition ABL 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, rather, any such alleged claim arising or asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority

with respect to the DIP Liens (as defined herein) as such claims had with respect to the Prepetition ABL Liens.

H. **Findings Regarding Corporate Authority.** Each Debtor has all requisite corporate power and authority to execute and deliver the DIP ABL Documents to which it is a party and to perform its obligations thereunder.

I. **Findings Regarding Postpetition Financing**

(i) *Request for Postpetition Financing*. The Debtors seek authority to (a) use Cash Collateral on the terms described herein, and (b) enter into, and borrow under, the DIP ABL Facility in a manner consistent with the terms and conditions set forth herein, in the DIP ABL Documents and in the Budget (as defined herein), to administer their Chapter 11 Cases, and to fund the Debtors' operations. At the Final Hearing, the Debtors will seek final approval of the DIP ABL Facility and use of Cash Collateral arrangements pursuant to a proposed Final Order, which shall be in form and substance acceptable to the DIP ABL Lenders and the Prepetition ABL Lenders. Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order, the Bankruptcy Code, and the Bankruptcy Rules.

(ii) *Priming of the Prepetition ABL Liens*. The priming of the Prepetition ABL Liens on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP ABL Facility and as further described below, is necessary for the Debtors to obtain the DIP ABL Facility and to continue to operate their business to the benefit of their estates and creditors. The Prepetition ABL 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 an immediate and critical need to use Cash Collateral on an interim basis and to obtain credit on an interim basis pursuant to the DIP ABL Facility in order to, among other things, 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 ABL Facility 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 business or maintain their properties in the ordinary course of business without the DIP ABL Facility and authorized use of Cash Collateral.

(iv) *No Credit Available on More Favorable Terms*. The DIP ABL Facility is the best source of debtor-in-possession financing available to the Debtors. 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 ABL Lenders on terms more favorable than the DIP ABL Facility. 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 that was on acceptable terms or able to close prior to the Petition Date. Financing on a postpetition basis on better terms is not otherwise

available without granting (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein; (2) superpriority claims and liens as provided herein; and (3) the other protections set forth in this Interim Order.

(v) *Use of Proceeds of the DIP ABL Facility*. As a condition to entry into the DIP ABL Agreement, the extension of credit under the DIP ABL Facility and the authorization to use Cash Collateral, the DIP ABL Agent, the DIP ABL Lenders, and the Prepetition ABL Parties require, and the Debtors have agreed, that proceeds of the DIP ABL Facility and Cash Collateral shall be used, in each case in a manner consistent with the terms and conditions of this Interim Order and the DIP ABL Documents and the budget (as the same may be modified from time to time consistent with the terms of the DIP ABL Documents and in this Interim Order and subject to such variances as permitted in the DIP ABL Documents[3]), and as set forth in paragraphs 15 and 16 hereof, the "Budget"),[4] for: (a) the Creeping Roll-Up (as defined herein) of the Prepetition ABL Obligations into DIP ABL Obligations to the extent provided for in this Interim Order and the DIP ABL Documents, and subject to the rights preserved in paragraph 35 of this Interim Order; (b) working capital and letters of credit; (c) permitted payment of costs of administering the Chapter 11 Cases; (d) payment of such other prepetition obligations consented to by the DIP ABL Lenders and solely in accordance with the terms and conditions set forth herein, in the DIP ABL Documents, and in the Budget and as approved by the Court; (e) payment of interest, fees and expenses (including, without limitation, legal and other professionals' fees and expenses of the DIP ABL Agent and Prepetition ABL Agent) and all other "Obligations" owed

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[3] For the avoidance of doubt, any such variances shall not measure, limit, or cap any Excluded Disbursements (as defined below), and such amount shall be considered part of the Budget.

[4] A copy of the initial Budget is attached hereto as **Exhibit A**.

under the Prepetition ABL Documents and the DIP ABL Documents; (f) payment of certain adequate protection amounts to the Prepetition ABL Parties, as set forth herein; (g) other general corporate purposes of the Debtors; and (h) funding of the Carve-Out.

(vi) *Application of Proceeds of Collateral*. As a condition to entry into the DIP ABL Agreement, the extension of credit under the DIP ABL Facility and authorization to use Cash Collateral, the Debtors, the DIP ABL Agent, the DIP ABL Lenders, and the Prepetition ABL 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 and as provided in the DIP ABL Documents and the Budget.

(vii) *DIP Roll-Up Obligations.* Upon (a) entry of this Interim Order, without any further action by the Debtors or any other party, but subject to paragraph 35 herein, (1) all Prepetition ABL Obligations relating to Secured Bank Services, fees and expenses and issued and outstanding Letters of Credit (each as defined in the Prepetition ABL Agreement) shall be deemed issued under and subject to the DIP ABL Agreement and shall constitute DIP ABL Obligations, and (2) all collections and proceeds of DIP Collateral shall be applied to reduce, on a dollar-for-dollar basis, the principal amount of the revolving loans advanced pursuant to the Prepetition ABL Agreement (the "Creeping Roll-Up"), and (b) entry of the Final Order granting such relief, but subject to paragraph 35 herein, all remaining outstanding Prepetition ABL Obligations shall be converted into and constitute DIP ABL Obligations (the "Full Roll-Up", and together with the Creeping Roll-Up, the "DIP Roll-Up Obligations"). The DIP Roll-Up Obligations shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition ABL Lenders to fund amounts under the DIP ABL Facility and not as adequate protection for, or otherwise on account of, any Prepetition ABL Obligations.

The Prepetition ABL Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens as provided herein, and the DIP ABL Agent and the DIP ABL Lenders would not be willing to provide the DIP ABL Facility or extend credit to the Debtors thereunder without the inclusion of the DIP Roll-Up Obligations in the DIP ABL Obligations. Moreover, the Creeping Roll-Up upon entry of this Interim Order, and the Full Roll-Up upon entry of the Final Order granting such relief, will enable the Debtors to obtain urgently needed financing to administer these Chapter 11 Cases and fund their operations. Because the DIP Roll-Up Obligations are subject to the reservation of rights in paragraph 35 below, they will not prejudice the right of any other party in interest.

J. **Adequate Protection**. Until the Prepetition ABL Obligations are Paid in Full,[5] the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Parties, is entitled to receive adequate protection to the extent of any Diminution in Value of its interests in the Prepetition Collateral as set forth in this Interim Order.

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[5] "Paid in Full" means the indefeasible repayment in full in cash of all obligations (including principal, interest, fees, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted) under the applicable credit facility, the cash collateralization or repayment in full in cash of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancelation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the terms of the applicable credit facility. No facility shall be deemed to have been Paid in Full until such time as, with respect to the applicable credit facility, (a) the commitments to lend thereunder have been terminated, (b) with respect to the Prepetition ABL Obligations and the DIP Roll-Up Obligations, (i) the Challenge Deadline (as defined herein) shall have occurred without the timely and proper commencement of a Challenge or (ii) if a Challenge is timely and properly asserted prior to the Challenge Deadline, upon the final, non-appealable disposition of such Challenge; (c) the satisfaction of any obligations with respect to the Carve-Out as provided herein; and (d) with respect to the Prepetition ABL Obligations and the DIP ABL Obligations, the Prepetition ABL Agent or the DIP ABL Agent (as applicable) has received (i) a countersigned payoff letter in form and substance satisfactory to such agent and (ii) releases in form and substance satisfactory to such agent, each in its sole discretion, including, upon the satisfaction of any obligations with respect to the Carve-Out as provided herein, a release from any further obligations or subordination with respect to the Carve-Out.

K. **Sections 506(c) and 552(b).** In light of: (i) the DIP ABL Agent's and DIP ABL Lenders' agreement that their liens and superpriority claims shall be subject to the Carve-Out, (ii) the Prepetition ABL Parties' agreement that their liens shall be subject to the Carve-Out and subordinate to the DIP Liens, and (iii) the payment of prepetition claims and/or expenses as set forth in the Budget and first day motions in accordance with and subject to the terms and conditions of this Interim Order and the DIP ABL Documents, (a) subject to entry of a Final Order granting such relief, the Prepetition ABL Parties 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 granting such relief, the DIP ABL Agent, the DIP ABL Lenders and the Prepetition ABL Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

L. **Good Faith of the DIP ABL Agent and DIP ABL Lenders**.

(i) *Willingness to Provide Financing*. The DIP ABL Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) entry of this Interim Order and the Final Order; (b) Court approval of the terms and conditions of the DIP ABL Facility and the DIP ABL Documents; (c) satisfaction of the closing conditions set forth in the DIP ABL Documents; and (d) findings by this Court that the DIP ABL Facility is essential to the Debtors' estates, that the DIP ABL Agent and DIP ABL Lenders are extending credit to the Debtors pursuant to the DIP ABL Documents in good faith, and that the DIP ABL Agent's and DIP ABL Lenders' claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP ABL 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 ABL Facility and the DIP ABL Documents, and the interest and

fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, are 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 ABL Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, the DIP ABL Agent, the DIP ABL Lenders, and the Prepetition ABL Parties, with the assistance and counsel of their respective advisors. Use of Cash Collateral and credit to be extended under the DIP ABL Facility shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP ABL Agent, the DIP ABL Lenders, and the Prepetition ABL Parties within the meaning of section 364(e) of the Bankruptcy Code.

M. **Immediate Entry**. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2). Absent the relief granted in this Interim Order, the Debtors' estates will be immediately and irreparably harmed.

N. **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 30 largest unsecured creditors on a consolidated basis; (iii) counsel to the Prepetition ABL Agent; and (iv) 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, the First Day Declaration, the Gupta Declaration, 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, ADJUDGED AND DECREED THAT:

1. DIP ABL Facility Approved. The DIP Motion is granted on an interim basis as set forth herein, the DIP ABL Facility is authorized and approved on an interim basis as set forth herein, 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 ABL Documents and this Interim Order. Any objections to this Interim Order to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled.

I. DIP ABL Facility Authorization

2. Authorization of the DIP ABL Facility. The DIP ABL Facility is hereby approved on an interim basis as set forth herein, including the Creeping Roll-Up authorized by this Interim Order. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP ABL Documents, and to incur and to perform the DIP ABL Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP ABL Documents, and to deliver all instruments, certificates, agreements, and documents that may be required or necessary for the performance by the Debtors under the DIP ABL Facility and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP ABL Documents, including, the joint and several guarantee of all of the DIP ABL Obligations and such acts as shall be necessary or desirable in order to effect the Creeping Roll-Up and, upon entry of the Final Order granting such relief, the Full Roll-Up. The Debtors are hereby authorized to pay, in accordance with this Interim Order, the principal, interest, fees, payments, expenses, and other

amounts described in the DIP ABL Documents as such amounts become due and payable and without need to obtain further Court approval, including, without limitation, closing fees, arrangement fees, letter of credit fees (including issuance, fronting, and other related charges), unused facility fees, continuing commitment fees, backstop fees, servicing fees, audit fees, appraisal fees, liquidator fees, structuring fees, administrative agent's fees and collateral agent's fees, and, subject to paragraph 31 herein, the reasonable fees and disbursements of the DIP ABL Agent's 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 ABL 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 ABL Documents. Upon execution and delivery, the DIP ABL Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms.

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 (a) entry of the Final Order or (b) the Termination Date (as defined below), and subject to the terms, conditions, limitations on availability and reserves (as applicable) set forth in the DIP ABL Documents and this Interim Order, the Debtors are hereby authorized to request extensions of credit (in the form of loans and letters of credit) under the DIP ABL Facility.

4. DIP ABL Obligations. The DIP ABL Documents and this Interim Order shall constitute and evidence the validity and binding effect of the DIP ABL Obligations, which

shall be enforceable against the Debtors, their estates and any successors thereto, including, without limitation, any trustee appointed in the Chapter 11 Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 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 ABL 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 ABL Agent or any of the DIP ABL Lenders, in each case, under, or secured by, the DIP ABL Documents or this Interim Order, including, without limitation, all principal, accrued interest, costs, fees, expenses and other amounts owing under the DIP ABL Documents, and all cash management and bank product exposure and hedging exposure and obligations to the extent provided under the DIP ABL Documents. Upon entry of this Interim Order, all Prepetition ABL Obligations relating to Secured Bank Services and issued and outstanding Letters of Credit under the Prepetition ABL Agreement shall continue in place and all such obligations shall be deemed issued under and subject to the DIP ABL Agreement and shall constitute DIP ABL Obligations. The Debtors shall be jointly and severally liable for the DIP ABL Obligations. The DIP ABL Obligations shall be due and payable, without notice or demand, on the DIP Maturity Date (as defined herein). No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP ABL Documents (including any DIP ABL Obligation or DIP Liens, and including, subject to paragraph 35 herein, in connection with any adequate protection provided to the Prepetition ABL Parties hereunder) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, 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 In order to secure the DIP ABL 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 Agent, for the benefit of itself and the DIP ABL Lenders, is hereby granted, subject to the priorities described herein (including with respect to the Carve-Out and Permitted Liens), continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the "DIP Liens") all Prepetition Collateral, "Collateral" (as defined in the DIP ABL Agreement) and real or personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors (collectively, the "DIP Collateral"), including without limitation: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, accounts receivable and other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including, without limitation, all of the issued and outstanding capital stock or equivalents 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, without limitation, 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, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all proceeds of leased real property; (c) the proceeds of 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 granting such relief (other than with respect to the proceeds of actions brought pursuant to section 549 of the Bankruptcy Code, which shall constitute DIP Collateral upon entry of this Interim Order), the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents; (e) subject to entry of a Final Order granting such relief, proceeds of the Debtors' rights under section 506(c) (solely to the extent such rights result from the use of the DIP ABL Facility or the DIP Collateral, and are, therefore, enforceable against parties other than the DIP ABL Agent, DIP ABL Lenders, or Prepetition ABL Parties) and 550 of the Bankruptcy Code; and (f) all other 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 (1) any (a) real property leases or property subject to a purchase money lien, capital lease or similar arrangement to the extent the creation of a security interest therein is prohibited thereby or creates a right of termination in favor of any other party thereto or otherwise requires third party consent thereunder, or (b) avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents; *provided*, *however*, that DIP Collateral shall include proceeds of all of the foregoing, subject to entry of the Final Order granting such relief in the case of clause (b) (other than with respect to actions brought pursuant to section 549 of the Bankruptcy Code with respect to DIP ABL Obligations); or (2) the Carve-Out Reserves, subject to paragraph 33(d) herein.

6. DIP Lien Priority. The DIP Liens securing the DIP ABL Obligations 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 Liens shall be subject to the Carve-Out and shall otherwise be junior only to the Permitted Prior Liens. Other than as set forth herein or in the DIP ABL 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 Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 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 Chapter 11 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. DIP Superpriority Claims. Upon entry of this Interim Order, the DIP ABL Agent, on behalf of itself and the DIP ABL Lenders, is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (collectively, the "DIP Superpriority Claims") for all DIP ABL Obligations. Except as set forth herein, the DIP Superpriority Claims shall have priority over any and all other obligations, liabilities and indebtedness of each Debtor other than the Carve-Out, including, without limitation, any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, 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; *provided that* subject to entry of a Final Order (other than with respect to the proceeds of actions brought pursuant to section 549 of the Bankruptcy Code), the DIP Superpriority Claims shall not be payable from the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents. 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 Superpriority Claims.

8. No Obligation to Extend Credit. Except as may be required to fund the Carve-Out Reserves (as defined below), the DIP ABL Agent and DIP ABL 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 ABL 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 ABL Documents and this Interim Order have been satisfied in full or waived by the DIP ABL Agent and in accordance with the terms of the DIP ABL Agreement.

9. Use of Proceeds of DIP ABL Facility. From and after the Petition Date, the proceeds of the loans extended to the Debtors under the DIP ABL Facility shall be used solely in accordance with the terms and conditions set forth in this Interim Order, the DIP ABL Documents and the Budget.

10. DIP Roll-Up Obligations. Upon (a) entry of this Interim Order, the Creeping Roll-Up is approved, and (b) entry of the Final Order granting such relief, the Full Roll-Up is approved. The authorization of the DIP Roll-Up Obligations shall be subject to the

reservation of rights set forth in paragraph 35 of this Interim Order and, in the event of a successful Challenge (as defined herein), the Court may fashion any appropriate remedy.

II. Authorization to Use Cash Collateral

11. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order, the DIP ABL Documents and the Budget, the Debtors are authorized to use Cash Collateral until the expiration of the Remedies Notice Period (as defined herein); *provided, however*, that during the Remedies Notice Period, the Debtors may seek relief pursuant to paragraph 29 below and use Cash Collateral to fund the Carve-Out, meet payroll obligations (other than severance) and sales taxes, pay expenses that the DIP ABL Lenders approve as critical to keeping the Debtors' business operating in accordance with the Budget, or as otherwise agreed by the DIP ABL Lenders 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 ABL Documents, and in accordance with the Budget.

12. Adequate Protection for Prepetition ABL Parties. Pursuant to sections 361, 363 and 364 of the Bankruptcy Code, as adequate protection against any Diminution in Value of the Prepetition ABL Parties' interests in the Prepetition Collateral, the Prepetition ABL Agent shall receive, for the benefit of itself and the Prepetition ABL Parties:

(a) *Adequate Protection Liens*. 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 and solely to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition ABL 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 "Adequate Protection Liens"). The Adequate Protection Liens shall be subject to the Carve-Out and shall otherwise be junior only to (1) Permitted Prior Liens; (2) the DIP Liens; and (3) the Prepetition ABL Liens. The Adequate Protection Liens shall otherwise be senior to all other security interests in or liens on any of the Debtors' assets. 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 Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of the Chapter 11 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 ABL Liens or the Adequate Protection Liens.

(b) *Adequate Protection Superpriority Claim*. As further adequate protection of the interests of the Prepetition ABL Parties in the Prepetition Collateral and solely to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition ABL 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 Chapter 11 Cases and any Successor Cases (the "Adequate Protection Superpriority Claim"). Except as set forth herein, the Adequate Protection Superpriority Claim 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, without limitation, 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 granting such relief), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code; *provided, however*, that the Adequate Protection Superpriority Claim shall be subject to the Carve-Out and junior to the DIP Superpriority Claims; *provided, further, that* subject to entry of a Final Order granting such relief (other than with respect to the proceeds of actions brought pursuant to section 549 of the Bankruptcy Code), the Adequate Protection Superpriority Claim shall not be payable from the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents.

(c) Adequate Protection Payments and Protections for Prepetition ABL Parties. As further adequate protection, 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) to the extent 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 35 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 Agent arising prior to the entry of this Interim Order (including prior to the Petition Date), including reasonable and documented fees and out-of-pocket expenses of (1) Morgan, Lewis & Bockius LLP, (2) Reed Smith LLP, and (3) Berkeley Research Group ("BRG" and, collectively, the "ABL Advisors"), and (iii) in accordance with the procedures set forth in paragraph 31 hereof, 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 Agent and arising subsequent to the entry of this Interim Order, including reasonable and documented fees and out-of-pocket expenses of the ABL Advisors.

13. Adequate Protection Reservation. 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 ABL Parties hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. The receipt by the Prepetition ABL Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition ABL Parties are adequately protected. Further, this Interim Order shall not prejudice or limit the rights of the Prepetition ABL Parties to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection in a manner consistent with the Prepetition ABL Documents, and all parties in interests' rights are reserved with respect thereto.

III. Provisions Common to DIP Financing and Use of Cash Collateral

14. Amendment of the DIP ABL Documents. The DIP ABL 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) immaterial or non-adverse to the Debtors and (b) in accordance with the DIP ABL Documents; *provided*, that the Debtors shall file a notice of such amendment, modification, or supplement with the Court. In the case of a material amendment, modification, or supplement to the DIP ABL Documents that is adverse to the Debtors' estates, the Debtors shall file a notice of such amendment, modification, or supplement with the Court and serve such notice to counsel to a Committee (if appointed) and the

U.S. Trustee, each of whom shall have five (5) days from the date of such notice to object in writing to such amendment, modification or supplement; *provided that* approval of the Court (which may be sought on an expedited basis) will be necessary to effectuate any amendment, modification or supplement that is the subject of a timely objection or that materially prejudices the interests of the Debtors.

15. Budget Maintenance. The use of proceeds under the DIP ABL Facility (including in connection with any letters of credit) and the use of Cash Collateral shall be in accordance with the terms and conditions set forth in this Interim Order and the Budget (subject to the Excluded Disbursements (defined below)), as described in paragraph 16 below. The Debtors shall, commencing with the first full calendar week after the Petition Date, deliver to the DIP ABL Agent, by not later than 5:00 p.m. (Eastern time) on Thursday of each week, a reconciliation for the prior week of each line item in the Budget. Commencing with the third full calendar week after the Petition Date, Budget compliance shall be tested weekly, on a rolling cumulative four-week basis (or such lesser cumulative period from the Petition Date). The Budget shall be updated, modified or supplemented by the Debtors with the written consent of the DIP ABL Agent, the Required Lenders (as defined in the DIP ABL Agreement), and the Prepetition ABL Agent, but in any event the Budget shall be updated by the Debtors not less than one time in each four (4) consecutive week period (provided that such updated Budget shall be in form and substance satisfactory to, and approved by, the DIP ABL Agent, the Required Lenders and the Prepetition ABL Agent in their reasonable discretion). No such updated, modified or supplemented budget shall be effective until so approved; *provided* that the Debtors, the DIP ABL Agent, the Required Lenders and the Prepetition ABL Agent shall work in good faith to reach agreement on any updated, modified or supplemented budget within four (4) business days after receipt of such

proposed budget; and once approved such updated, modified or supplemented budget shall be deemed the "Budget"; *provided, however*, that in the event that the DIP ABL Agent, the Required Lenders and the Prepetition ABL Agent and the Debtors cannot agree as to an updated, modified or supplemented budget within such four (4) business day period (unless such period is extended by the Debtors, the DIP ABL Agent, the Required Lenders and the Prepetition ABL Agent), the prior approved Budget shall continue in effect, with weekly details for any periods after the initial 13-week period to be derived in a manner reasonably satisfactory to the DIP ABL Agent, the Required Lenders and the Prepetition ABL Agent from the monthly budget prepared by the Debtors (and approved by the DIP ABL Agent, the Required Lenders and the Prepetition ABL Agent, each in their sole discretion) for these Chapter 11 Cases, and such disagreement shall give rise to an Event of Default under the DIP ABL Agreement and this Interim Order once the period covered by the prior approved Budget has terminated. 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 ABL Agent, the Required Lenders and the Prepetition ABL Agent.

16. Budget Compliance. Subject to the variances set forth in the DIP ABL Documents and as provided herein, the Debtors shall at all times comply with the Budget; *provided*, that such variances shall not measure, limit or cap any cash disbursements in respect of (a) restructuring professional fees (including, without limitation, fees and expenses of the advisors of the Debtors, any committee appointed under section 1102 of the Bankruptcy Code, the DIP ABL Agent and Prepetition ABL Agent, each as provided in this Interim Order and the Final Order); and (b) other restructuring charges arising on account of the Cases, consisting of (1) U.S. Trustee fees, (2) amounts paid by the Debtors to the Prepetition ABL Parties as adequate protection, and (3) interest payable under the DIP ABL Agreement (clauses (a) and (b) collectively,

the "Excluded Disbursements") and such Excluded Disbursements shall be considered part of the Budget. The Debtors shall provide all reports and other information as required in the DIP ABL Agreement. The Debtors' failure to comply with the Budget or to provide the reports and other information required in the DIP ABL Documents shall constitute an Event of Default (as defined herein and in the DIP ABL Documents).

17. 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, without limitation, 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 Agent and the Prepetition ABL 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 ABL Agent, DIP ABL Lenders, and Prepetition ABL Parties under the DIP ABL Documents, the DIP ABL Facility, and this Interim Order, as applicable; and (d) authorize the Debtors to pay, and the DIP ABL Agent, the DIP ABL Lenders, and the Prepetition ABL Parties to retain and apply, payments made in accordance with the terms of this Interim Order and the DIP ABL Documents.

18. 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 or mortgage) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to evidence or entitle the DIP ABL Agent, the DIP ABL Lenders, and the Prepetition ABL Parties to the priorities granted herein. Notwithstanding the foregoing, each of the DIP ABL Agent and the Prepetition ABL Agent are authorized to file, in the applicable registries of deeds and other appropriate public records, as it in its sole discretion deems necessary or advisable, (a) notice of this Interim Order, and (b) such financing statements, security agreements, mortgages, leasehold 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, leasehold 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 Agent and the Prepetition ABL Agent all such financing statements, deposit account control agreements, mortgages, leasehold mortgages, notices, and other documents as the DIP ABL Agent or the Prepetition ABL Agent may reasonably request. Each of the DIP ABL Agent and the Prepetition ABL 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 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 collateral documents or relevant Prepetition ABL Documents then automatically and without

further action, (i) the DIP ABL Agent shall be deemed to be a secured party under such documents, (ii) the DIP ABL Facility, together with any refinancings or replacements thereof, shall be deemed to be secured obligations under such documents, and (iii) the applicable provisions of such documents shall apply to the DIP ABL Facility; all as fully and completely as if the DIP ABL Agent was an original secured party in such documents and the DIP ABL Facility was an original secured obligation in such documents. To the extent the Prepetition ABL Agent is listed as loss payee, lender loss payee, mortgagee or additional insured under any of the Debtors' insurance policies, the DIP ABL Agent shall also be deemed to be the secured party under such documents or to be the loss payee, lender loss payee, mortgagee or additional insured, as applicable.

19. Application of Proceeds of Collateral. As a condition to the entry of the DIP ABL Documents, the extension of credit under the DIP ABL Facility and the authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the date of the Interim Hearing, all proceeds of DIP Collateral, including whether sold in the ordinary course, liquidated, or otherwise, shall be applied in accordance with the terms and conditions of this Interim Order, the DIP ABL Documents, and the Budget until such time as the DIP ABL Obligations and the Prepetition ABL Obligations have been Paid in Full.

20. Protections of Rights of DIP ABL Agent, DIP ABL Lenders and Prepetition ABL Parties. Unless the DIP ABL Agent and the Prepetition ABL Agent, as applicable, shall have provided their prior written consent, or all DIP ABL Obligations and all Prepetition ABL Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been, or contemporaneously will be, Paid in Full, in any of these Chapter 11 Cases or any Successor Cases, the Debtors shall neither seek entry of, nor support any motion or application seeking entry of, and otherwise shall object to any motion or application seeking entry

of, any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following, except as permitted in the DIP ABL Documents or this Interim Order: (a) 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 ABL Liens, the Adequate Protection Liens, and/or the Adequate Protection Superpriority Claims; (b) the use of Cash Collateral for any purpose other than as permitted in the DIP ABL Documents or this Interim Order; (c) subject to the entry of a Final Order granting such relief, except as set forth in the DIP ABL Documents, 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 against any of its prepetition indebtedness based upon any such return of goods pursuant to section 553 of the Bankruptcy Code; or (d) any modification of any of the DIP ABL Agent's, the DIP ABL Lenders', or the Prepetition ABL Parties' rights under this Interim Order, the DIP ABL Documents or the Prepetition ABL Documents, as applicable, with respect to any DIP ABL Obligations or Prepetition ABL Obligations. It shall be an Event of Default under the DIP ABL Documents and this Interim Order if, in any of these Chapter 11 Cases or any Successor Cases, the Debtors take or fail to take any of the actions contemplated with respect to provisions (a) through (d) of the previous sentence or if any order is entered granting any of the relief enumerated in provisions (a) through (d) of the previous sentence.

21. Credit Bidding. In connection with any sale process authorized by the Court, (a) the DIP ABL Agent and the DIP ABL Lenders and (b) subject to entry of a Final Order granting such relief and to the rights preserved in paragraph 35, the Prepetition ABL Agent and

Prepetition ABL Parties, or any assignee or designee of any of the foregoing, shall be authorized to credit bid, consistent with the applicable DIP ABL Documents and/or Prepetition ABL Documents, 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 provision of consideration sufficient to indefeasibly pay in full in cash any senior liens on the collateral that is subject to the Credit Bid except to the extent otherwise agreed by the holder of such senior lien in their sole and absolute discretion.

22. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to sections 364(b), 364(c), or 364(d) of the Bankruptcy Code or in violation of the DIP ABL Documents at any time prior to the DIP ABL Obligations and Prepetition ABL Obligations being Paid in Full, 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 Agent to be applied in accordance with this Interim Order and the DIP ABL Documents.

23. Cash Collection.

(a) From and after the date of the entry of this Interim Order, subject to the funding of the Carve-Out Reserves (as defined below) in accordance with this Interim Order, all collections and proceeds of any DIP Collateral or Prepetition 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 Collateral were deposited under the Prepetition ABL Documents (or in such other accounts as are designated by the DIP ABL 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 Agent until such time as the Prepetition ABL Obligations and the DIP ABL Obligations have been Paid in Full, subject to the terms of this Interim Order.

(b) Unless otherwise agreed to in writing by the DIP ABL Agent, or otherwise provided for herein, other than the account(s) holding the Carve-Out Reserves, 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 Agent, subject to the terms of this Interim Order.

24. Maintenance of DIP Collateral. Until all DIP ABL Obligations and all Prepetition ABL Obligations have been Paid in Full, and the DIP ABL Agent's and the DIP ABL Lenders' obligation to extend credit under the DIP ABL Facility has terminated, the Debtors shall: (a) insure the DIP Collateral as required under the DIP ABL Facility, or the Prepetition ABL Documents, or any order of this Court, as applicable; and (b) maintain the cash management system which has been agreed to by the DIP ABL Agent and the Prepetition ABL Agent or as otherwise required by the DIP ABL Documents and the Prepetition ABL Documents.

25. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral (including Prepetition Collateral) other than in the ordinary course of business without the prior written consent of the DIP ABL Agent, the Required Lenders and Prepetition ABL Agent (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP ABL Agent, DIP ABL Lenders, Prepetition ABL Agent, Prepetition ABL Lenders, or Prepetition ABL Parties, or from any order of this Court), except as otherwise permitted by the DIP ABL Documents or otherwise ordered by the Court.

26. DIP Maturity Date. On the DIP Maturity Date: (a) all DIP ABL Obligations shall be immediately due and payable, all commitments to extend credit under the DIP ABL Facility will terminate, other than as required in paragraph 33 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, the Debtors may seek relief as set forth in paragraph 29 below and use Cash Collateral to fund the Carve-Out, pay payroll obligations (other than severance) and sales taxes, and other expenses, in the case of such expenses, that the DIP ABL Agent and DIP ABL Lenders approve as critical to keeping the Debtors' business operating subject to the Budget; and (c) upon the expiration of the Remedies Notice Period, the DIP ABL Agent shall be entitled to exercise rights and remedies under the DIP ABL Documents in accordance with this Interim Order

(including paragraph 29). For the purposes of this Interim Order, "DIP Maturity Date" shall mean the "Maturity Date" as defined in the DIP ABL Agreement.

27. Events of Default. The occurrence of any of the following events, unless waived by the Prepetition ABL Agent or the DIP ABL Agent in writing and in accordance with the terms of the DIP ABL Agreement or otherwise cured as set forth in the DIP ABL Agreement, shall constitute an event of default (an "Event of Default") of this Interim Order: (i) the failure of the Debtors to materially perform, in any respect, any of the terms, provisions, covenants, or obligations under this Interim Order, including the failure to comply with the Case Milestones (as defined herein) or the Budget, or (ii) an "Event of Default" under this Interim Order or the DIP ABL Agreement has occurred and is continuing.

28. Milestones. It shall be an Event of Default if the Debtors fail to comply with the case milestones, which are set forth on **Exhibit C** hereto (as may be amended from time to time in accordance with the DIP ABL Documents, this Interim Order or with the consent of the DIP ABL Agent, 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 the DIP ABL Agreement and this Interim Order; (b) subject to the expiration of the Remedies Notice Period, result in the automatic termination of the Debtors' authority to use Cash Collateral under this Interim Order; and (c) permit the DIP ABL Agent, subject to paragraph 29, to exercise the rights and remedies provided for in this Interim Order and the DIP ABL Documents.

29. 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 ABL Documents or this Interim Order, 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: (a) the DIP ABL Agent or the Prepetition ABL Agent may declare (any such declaration shall be referred to herein as a "Termination Declaration") (i) all DIP ABL Obligations owing under the DIP ABL Documents to be immediately due and payable (including the cash collateralization of all outstanding letters of credit and Bank Product Obligations (as defined in the DIP ABL Agreement) in accordance with the DIP ABL Documents), (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 DIP ABL Facility, (iii) termination of the DIP ABL Facility and any other DIP ABL Documents as to any future liability or obligation of the DIP ABL Agent and the DIP ABL Lenders, but without affecting any of the DIP Liens or the DIP ABL Obligations, and (iv) that the application of the Carve-Out has occurred through the delivery of the Carve-Out Trigger Notice (as defined below) to the Debtors; and (b) the DIP ABL Agent or the Prepetition ABL Agent 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 Maturity 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 a Committee (if appointed), and the U.S. Trustee. The automatic stay in the Chapter 11 Cases otherwise applicable to the DIP ABL Agent and the Prepetition ABL Agent is hereby modified so that five (5) business days after a Termination Date (the "Remedies Notice Period"), the applicable DIP ABL Agent or Prepetition ABL Agent shall be entitled to exercise their respective rights and remedies to the extent available in accordance with the DIP ABL Documents, Prepetition ABL Documents and this Interim Order; *provided*, that until the expiration of the Remedies Notice Period, the Debtors may seek certain remedies with respect to the occurrence of a Termination Date (unless the Event of Default giving

rise to the Termination Declaration is the Debtors' failure to enter into a Stalking Horse Agreement in accordance with the Case Milestones) and continue to use Cash Collateral to make payments in respect of expenses reasonably necessary to keep the Debtors' business operating in accordance with this Interim Order and the Budget; *provided, further*, that the Debtors may continue to use Cash Collateral during and after expiration of the Remedies Notice Period to the extent necessary to fund the Carve-Out Reserves. Notwithstanding anything to the contrary herein, the Debtors' right to contest an Event of Default shall not be a violation of this Interim Order in and of itself; *provided, however*, that all rights of the DIP ABL Agent, the DIP ABL Lenders and the Prepetition ABL Agent are reserved and preserved with respect to the Debtors taking such action. During the Remedies Notice Period, the Debtors and any Committee (if appointed) shall be entitled to seek an emergency hearing within the Remedies Notice Period with this Court and the Court may fashion an appropriate remedy; *provided that*, if such emergency hearing is requested to be heard before the end of the Remedies Notice Period but is scheduled for a later date by the Court, the Remedies Notice Period shall be automatically extended to the date of a ruling in respect of such hearing; *provided, further*, that the rights of the DIP ABL Agent, the DIP ABL Lenders and the Prepetition ABL Parties to contest such relief are expressly preserved.

30. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. The DIP ABL Agent, the DIP ABL Lenders, and the Prepetition ABL Parties have acted at arms' length 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.

31. DIP and Other Expenses; Procedures for Payment of DIP ABL Agent's, DIP ABL Lenders' and Prepetition ABL Parties' Professional Fees and 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 ABL Agent in connection with the Chapter 11 Cases, the DIP ABL Facility, as provided in the DIP ABL Documents, or incurred in connection with any proposed exit or acquisition financing, chapter 11 plan or transactions contemplated thereunder or sale transaction (including the preparation and negotiation of the documentation relating to any such exit or acquisition financing, plan or sale transaction), whether or not the transactions contemplated hereby are consummated, including reasonable and documented attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of reasonable and documented fees and out-of-pocket expenses, including the fees and out-of-pocket expenses of the ABL Advisors. Payment of all professional fees and out-of-pocket expenses of the DIP ABL Agent and the Prepetition ABL Agent addressed in this Interim Order (including the ABL Advisors) shall not be subject to allowance by the Court and shall not be limited by the Budget. Any time that professionals for the DIP ABL Agent and the Prepetition ABL Agent (including the ABL Advisors) seek payment of fees and out-of-pocket expenses from the Debtors, each professional shall provide copies of its invoices (which shall not be required to contain time entries, but shall include a general, brief description of the nature of the matters for which services were performed, 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; *provided*, *however*, that the U.S. Trustee and the Committee (if any) reserve their rights to request additional detail regarding the services rendered and expenses

incurred by such professionals. Any objections raised by the Debtors, the U.S. Trustee or a Committee (if appointed) with respect to the Debtors' payment of the amounts in such invoices must be filed with the Court and served within ten (10) days of such party's receipt of such invoice, and any such objection shall 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 (or authorize the reimbursement from any prepetition retainers) upon closing of the DIP ABL Facility all reasonable, undisputed and documented fees, costs and out-of-pocket expenses, including fees and out-of-pocket expenses of ABL Advisors, the DIP ABL Agent and the Prepetition ABL Agent incurred on or prior to such date without the need for any professional engaged by the DIP ABL Agent or the Prepetition ABL Agent to first deliver a copy of its invoice as provided for herein. No attorney or advisor to the DIP ABL Agent or the Prepetition ABL Agent shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court.

32. Proofs of Claim. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or any Successor Cases to the contrary, the DIP ABL Agent, the DIP ABL Lenders, and Prepetition ABL Parties will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claims arising under the DIP ABL Documents or the Prepetition ABL Documents. The Stipulations, admissions, and acknowledgments and the provisions of this Interim Order shall be deemed to constitute a timely filed proof of claim for the DIP ABL Agent, the DIP ABL Lenders and the Prepetition ABL Parties with regard to all claims arising under the DIP ABL Documents or the Prepetition ABL Documents. Notwithstanding the foregoing, the Prepetition ABL Agent on behalf of itself and the Prepetition ABL 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 or master proofs of claim in each of the Chapter 11 Cases or Successor Cases for any claim described herein (with any such aggregate or master proof of claim filed in the Chapter 11 Cases deemed to be filed in all Chapter 11 Cases of the Debtors and asserted against all of the Debtors). Any proof of claim filed by the Prepetition ABL 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. Any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or Successor Cases shall not apply to any claim of the DIP ABL Agent, the DIP ABL Lenders, and the Prepetition ABL Parties. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party in interest or their respective successors-in-interest.

33. Carve-Out.

(a) As used herein, 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 U.S. 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; (iii) to the extent allowed at any time, whether by interim order, final order, procedural order, or otherwise, all unpaid fees and expenses (excluding any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors of the Debtors or any statutory committee appointed in the Chapter 11 Cases (the "Committee")[6]) (the fees and expenses referred

[6] Notwithstanding anything to the contrary herein, Houlihan Lokey Capital, Inc. ("Houlihan"), shall be entitled to (1) in the event of a going concern sale that results in an Acceptable Sale (as defined in **Exhibit C**), a fee in the amount of $2,750,000 (the "Sale Fee"), which Sale Fee shall be payable from either (i) the proceeds of the Real Estate Transaction (as defined in **Exhibit C**) or (ii) the proceeds of the Acceptable Sale (as defined in **Exhibit C**) and deposited into the Carve-Out Reserve solely for the benefit of Houlihan; or (2) in the event that there is a Liquidation Pivot (as defined in **Exhibit C**), a fee

to in this clause (iii), 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") or the Committee 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 through (and including) the first business day following the Termination Declaration Date (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice (as defined below), up to the Professional Fee Carve-Out Cap (as defined below); and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed **$1,500,000** incurred after the earlier of (1) the first business day following the Termination Declaration Date or (2) the Revolver Repayment Date, to the extent allowed at any time, whether by interim order, final order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve-Out Trigger Notice Cap"). 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 Agent or the Prepetition ABL Agent to the Debtors, their lead restructuring counsel (Skadden, Arps, Slate, Meagher & Flom LLP), the U.S. Trustee, and counsel to the Committee, which notice may be delivered (y) following the occurrence and during the continuation of an Event of Default, or (z) upon termination of the Debtors' right to use Cash Collateral by the Prepetition ABL Agent, in each case stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

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in the amount of $2,000,000 (the "Disposition Fee"), of which $1,000,000 of such Disposition Fee shall be payable from the proceeds of the Real Estate Transaction and deposited into the Carve-Out Reserve solely for the benefit of Houlihan, and the remaining $1,000,000 of such Disposition Fee shall, following the occurrence of the DIP ABL Obligations and the Prepetition ABL Obligations being Paid in Full, be funded out of the next proceeds or receipts from any other asset disposition and deposited into the Carve-Out Reserve solely for the benefit of Houlihan.

(b) Fee Estimates. Until the first full week after the Termination Declaration Date, not later than 7:00 p.m. New York time on the third business day of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors, AlixPartners and BRG a statement setting forth a good-faith estimate of the amount of fees and expenses (collectively, "Estimated Fees and Expenses") incurred during the preceding week by such Professional Person (through Saturday of such week, the "Calculation Date"), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a "Weekly Statement"); *provided* that following and no earlier than three (3) business days after the Termination Declaration Date, such Weekly Statement shall include the Estimated Fees and Expenses since the most recent Calculation Date through the first business day after the Termination Declaration Date and no additional Weekly Statements shall be required thereafter. If any Professional Person fails to deliver a Weekly Statement within three (3) calendar days after such Weekly Statement is due,[7] such Professional Person's entitlement (if any) to any funds in the Carve-Out Reserves (as defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of professional fees included in the Budget for such period for such Professional Person; *provided that* such Professional Person shall be entitled to be paid any unpaid amount of Allowed Professional Fees in excess of professional fees included in the Budget for such period for such

[7] For the avoidance of doubt, to the extent any Professional Person submits a Weekly Statement within the three (3) calendar days after such Weekly Statement is due, such Weekly Statement shall be considered timely submitted for purposes of this paragraph 33.

Professional Person from the Pre-Carve-Out Trigger Notice Reserve (as defined below), to the extent there are any excess funds after each Professional Person is paid its Allowed Professional Fees up to the respective weekly amounts set forth in their timely Weekly Statements or as set forth in the Budget, as applicable.

(c) Carve-Out Reserves. Upon the entry of this Interim Order, the Debtors shall establish a segregated account with the DIP ABL Agent in trust (the "Pre-Carve-Out Trigger Notice Reserve") and fund (and continue to fund as necessary as provided herein) such account in an amount (the "Pre-Carve-Out Trigger Notice Reserve Amount") equal to the sum of (i) the aggregate unpaid amount of Estimated Fees and Expenses included in all Weekly Statements timely received by the Debtors, and, to the extent a Weekly Statement was not received (or was not received in a timely manner) for a Professional Person for any given time period, then, on account of such Professional Person, the aggregate amount of professional fees contemplated to be unpaid in the Budget as of the most recent Calculation Date, *plus* (ii) the amounts contemplated under paragraph (a)(i) and (a)(ii) above, funded first with cash on hand and, if insufficient to fully fund to the extent required at such time, with borrowings under the DIP ABL Agreement. Following the Termination Declaration Date, the DIP ABL Agent shall not sweep or foreclose on any available cash of the Debtors until the Pre-Carve-Out Trigger Notice Reserve is fully funded in accordance with this paragraph. Amounts in the Pre-Carve-Out Trigger Notice Reserve shall be held in trust to pay all Allowed Professional Fees incurred prior to the Termination Declaration Date, and such payments shall not reduce the Post-Carve-Out Trigger Notice Cap. The DIP ABL Agent shall also be entitled to maintain a reserve against the borrowing base in an amount equal to (i) the Post-Carve-Out Trigger Notice Cap, *plus* (ii) any additional amount to the extent of any insufficient funding of the Pre-Carve-Out Trigger Notice Reserve as of the most

recent DIP Carve-Out Reserve Amount Report Date (as defined below), *plus* (iii) an amount equal to the amount of professional fees set forth in the Budget for the then current week (*i.e.*, the week commencing after the most recent Calculation Date) and the two weeks succeeding such current week (such amount set forth in (iii) of this sentence, the "Budgeted Cushion Amount"). Not later than 7:00 p.m. New York time on the fourth business day of each week (the "DIP Carve-Out Reserve Amount Report Date") starting with the first full calendar week following the Petition Date and ending in the first week following the Termination Declaration Date, the Debtors shall deliver to the DIP ABL Agent and the Prepetition ABL Agent a report setting forth the Pre-Carve-Out Trigger Notice Reserve Amount as of such time, and, on the first business day after each DIP Carve-Out Reserve Amount Report Date, the Debtors shall deposit into the Pre-Carve-Out Trigger Notice Reserve an amount sufficient to cause the balance in such account to equal the Pre-Carve-Out Trigger Notice Reserve Amount. Prior to the delivery of the first report setting forth the Pre-Carve-Out Trigger Notice Reserve Amount, the Debtors and the DIP ABL Agent shall calculate the Pre-Carve-Out Trigger Notice Reserve Amount by reference to the Budget for subsection (i) of the Pre-Carve-Out Trigger Notice Reserve Amount. Notwithstanding the occurrence of an Event of Default and taking into account the Funding Condition Carveouts (as defined herein), on the day on which a Carve-Out Trigger Notice is given by either the DIP ABL Agent or the Prepetition ABL Agent to the Debtors, their lead restructuring counsel (Skadden, Arps, Slate, Meagher & Flom LLP), the U.S. Trustee, and counsel to the Committee (the "Termination Declaration Date"), the Carve-Out Trigger Notice shall be deemed a draw request and notice of borrowing for the DIP Revolving Loans under the DIP ABL Agreement (and any such amounts actually advanced constituting DIP Revolving Loans) or authorization for the Debtors' use of DIP Collateral (including Cash Collateral) to fund the Pre-Carve-Out Trigger

Notice Reserve, without duplication and solely to the extent not already funded, in an amount equal to the sum of the unpaid amounts set forth in paragraphs (a)(i), (a)(ii), and (a)(iii) above (for the avoidance of doubt, such draw request or use of DIP Collateral shall include an amount sufficient to satisfy good-faith unpaid Estimated Fees and Expenses incurred since the most recent Calculation Date through the Termination Declaration Date so long as the amount funded for (a)(iii), in the aggregate and without duplication, does not exceed the Professional Fee Carve-Out Cap). Notwithstanding anything to the contrary herein, any funding request or use of DIP Collateral for unpaid amounts of Allowed Professional Fees under paragraph (a)(iii) above shall be limited to the sum of (I) the aggregate unpaid amount of Estimated Fees and Expenses included in such Weekly Statements timely received by the Debtors prior to the Termination Declaration Date and, to the extent a Weekly Statement was not received (or was not received in a timely manner) for a Professional Person for any given time period, then, on account of such Professional Person for such time period(s), the aggregate amount of professional fees of such Professional Person contemplated to be unpaid in the Budget *plus* (II) the Budgeted Cushion Amount (such amount, the "Professional Fee Carve-Out Cap"). On the Termination Declaration Date, the Carve-Out Trigger Notice shall also be deemed a draw request, notice of borrowing or use of DIP Collateral by the Debtors to fund a segregated account with the DIP ABL Agent in trust (the "Post-Carve-Out Trigger Notice Reserve," and together with the Pre-Carve-Out Trigger Notice Reserve, the "Carve-Out Reserves") in an amount equal to the Post-Carve-Out Trigger Notice Cap.[8] On the

[8] In addition, following the occurrence of the DIP ABL Obligations and the Prepetition ABL Obligations being Paid in Full, an additional amount of $2 million shall be funded out of the next available proceeds or receipts from any asset disposition and deposited into the Post-Carve-Out Trigger Notice Reserve solely for the benefit of Allowed Professional Fees; *provided* that such amount shall not be a condition to the DIP ABL Obligations or the Prepetition ABL Obligations being Paid in Full or to the occurrence of the Revolver Repayment Date (and such amount shall not be deemed to be part of the Carve-Out until the DIP ABL Obligations and the Prepetition ABL Obligations have been Paid in Full).

first business day following the Termination Declaration Date, notwithstanding anything in the DIP ABL Agreement to the contrary, including with respect to (1) the existence of a Default (as defined in the DIP ABL 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, (3) any termination of the Commitments (as defined in the DIP ABL Agreement) following an Event of Default, or (4) the occurrence of the DIP Maturity Date (clause (1) to (4), the "Funding Condition Carveouts"), each DIP ABL Lender with an outstanding Commitment shall make available to the DIP ABL Agent, such DIP ABL Lender's *pro rata* share of such DIP Revolving Loans as provided in this paragraph (c) to the extent the Carve-Out Reserves have not yet been funded as provided herein; *provided*, *however*, that in the event that the Revolver Repayment Date[9] occurs prior to the Termination Declaration Date, (i) the Commitments shall be deemed terminated and canceled in accordance with a payoff letter in form and substance acceptable to the DIP ABL Agent, (ii) the DIP ABL Agent, the Prepetition ABL Agent, and each of the DIP ABL Lenders and the Prepetition ABL Lenders holding DIP ABL Obligations or Prepetition ABL Obligations, shall each no longer have any further liability whatsoever for any fees or amounts constituting the Carve-Out, regardless of when arising or incurred, and (iii) on and after the Revolver Repayment Date, the Debtors shall be required to maintain at all times a

[9] The "Revolver Repayment Date" shall mean the date upon which the following have occurred or shall occur: (i) the repayment in full in cash of all DIP ABL Obligations and Prepetition ABL Obligations (including all principal, interest, fees, prepayment premiums, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted), the cash collateralization or repayment in full in cash of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancelation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the terms of the applicable credit facility and this Interim Order, and (ii) funds in the amount equal to the then unfunded Carve-Out (calculated as if the Revolver Repayment Date were the Termination Declaration Date) have been deposited into the Carve-Out Reserves exclusively to pay unpaid Allowed Professional Fees prior to any and all other claims in accordance with the Carve-Out and this Interim Order or the Final Order.

segregated account (which account may be one of the Carve-Out Reserves) in trust in the amount of the Carve-Out Reserves.

(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. Thereafter, 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 to the DIP ABL Agent or Prepetition ABL Agent (as applicable) on account of any remaining DIP ABL Obligations or Prepetition ABL Obligations, respectively, until such obligations have been Paid in Full.

(ii) All funds in the Post-Carve-Out Trigger Notice Reserve 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"). Thereafter, 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 in the same manner as provided above with respect to the Pre-Carve-Out Trigger Notice Reserve.

(iii) Notwithstanding anything to the contrary in the DIP ABL Agreement, this Interim Order or the Final Order, if (x) the Pre-Carve-Out Trigger Notice Reserve is not funded in full in the amounts set forth in paragraph (c) above, then, any excess funds in the Post-Carve-Out Trigger Notice Reserve following the payment in full of the Post-Carve-Out Amounts shall be used to fund the Pre-Carve-Out Notice Trigger Reserve Account to the extent of any shortfall in funding prior to making any payments, if any, to the DIP ABL Agent or the

Prepetition ABL Agent (as applicable) on account of any remaining DIP ABL Obligations or Prepetition ABL Obligations, respectively, and (y) the Post-Carve-Out Trigger Notice Reserve is not funded in full in the amounts set forth in paragraph (c) above, then any excess funds in the Pre-Carve-Out Trigger Notice Reserve Account following the payment in full of the Pre-Carve-Out Amounts shall be used to fund the Post-Carve-Out Trigger Notice Reserve to the extent of any shortfall in funding prior to making any payments, if any, to the DIP ABL Agent or the Prepetition ABL Agent on account of any remaining DIP ABL Obligations or Prepetition ABL Obligations, respectively.

(iv) Notwithstanding anything to the contrary in the DIP ABL Agreement or this Interim Order, following delivery of a Carve-Out Trigger Notice, the DIP ABL Agent and the Prepetition ABL 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 Carve-Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve-Out Reserves after payment in full of all Pre-Carve-Out Amounts and Post-Carve-Out Amounts, with any excess paid as provided in clauses (i) and (ii) (subject, in all respects, to clause (iii) above).

(v) Carve-Out Priority. Notwithstanding anything to the contrary in this Interim Order or the Final 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, and (ii) in no way shall any Budget, 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 in this Interim Order, the Carve-Out shall be senior to all liens, security interests and superpriority claims hereunder, under the DIP ABL Documents or the Prepetition ABL Agreement, and any and all

other forms of adequate protection, liens (including Permitted Prior Liens), or claims securing the DIP ABL Obligations or the Prepetition ABL Obligations.

(vi) No Direct Obligation To Pay Allowed Professional Fees. Other than funding of the Carve-Out and Carve-Out Reserves with the proceeds of the DIP ABL Facility and the DIP Collateral (including, without limitation, Cash Collateral) as provided herein, none of the DIP ABL Lenders and the Prepetition ABL Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Other than funding of the Carve-Out and Carve-Out Reserves with the proceeds of the DIP ABL Facility and the DIP Collateral (including, without limitation, Cash Collateral) as provided herein, nothing in this Interim Order or otherwise shall be construed to obligate the DIP ABL Lenders or Prepetition ABL 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.

(vii) Payment of Carve-Out On or After the Termination Declaration Date. Following the delivery of the Carve-Out Trigger Notice and until the DIP ABL Obligations and the Prepetition ABL Obligations have been Paid in Full, all Allowed Professional Fees shall be paid from the applicable Carve-Out Reserve and/or any unencumbered collateral, and no Professional Person shall seek payment of any Allowed Professional Fees from any DIP Collateral until the applicable Carve-Out Reserve has been exhausted. 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 from DIP Collateral shall be added to, and made a part of,

the obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim Order, the DIP ABL Documents, the Bankruptcy Code, and applicable law.

34. Limitations on Use of DIP Proceeds, Cash Collateral, and Carve-Out. The DIP ABL Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral and the Carve-Out may not be used in connection with, except as provided in this Interim Order or the DIP ABL Documents: (a) preventing, hindering, or delaying any of the DIP ABL Agent's, the DIP ABL Lenders', or the Prepetition ABL Parties' permitted enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (b) using or seeking to use Cash Collateral or selling or otherwise disposing of DIP Collateral without the consent of the DIP ABL Agent or as permitted by the DIP ABL Documents; (c) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP ABL Agent; (d) incurring Indebtedness (as defined in the DIP ABL Agreement) without the prior consent of the DIP ABL Agent, except to the extent permitted under the DIP ABL Agreement; (e) seeking to amend or modify any of the rights granted to the DIP ABL Agent, the DIP ABL Lenders, or the Prepetition ABL Parties under this Interim Order, the DIP ABL Documents, or the Prepetition ABL Documents, including seeking to use Cash Collateral and/or DIP Collateral on a contested basis; (f) objecting to or challenging in any way the DIP Liens, DIP ABL Obligations, Prepetition ABL Liens, Prepetition ABL 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 Agent, the DIP ABL Lenders, or the Prepetition ABL Parties, respectively; (g) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, 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 ABL Agent, the DIP ABL Lenders, the Prepetition ABL Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees; (h) litigating against, 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 ABL Obligations, the DIP Liens, the Prepetition ABL Liens, Prepetition ABL Obligations or any other rights or interests of any of the DIP ABL Agent, the DIP ABL Lenders, the Prepetition ABL Parties; or (i) seeking to subordinate, recharacterize, disallow or avoid the DIP ABL Obligations or the Prepetition ABL Obligations; *provided, however*, that the Carve-Out and such collateral proceeds and loans under the DIP ABL Documents may be used for allowed fees and expenses, in an amount not to exceed **$50,000** in the aggregate, incurred solely by a Committee (if appointed), in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority or extent of the Prepetition ABL Obligations within the Challenge Period.

35. Effect of Stipulations on Third Parties.

(a) *Generally*. The admissions, Stipulations, agreements, releases, and waivers set forth in paragraph F of this Interim Order (collectively, the "Prepetition Lien and Claim Matters") are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including, without limitation, a Committee (if appointed), unless, and solely to the extent that, a party in interest with proper standing and the requisite authority to commence a Challenge (as defined below) (other than the Debtors, as to which any Challenge is irrevocably waived and relinquished) (i) has timely filed the pleadings, and timely commenced the proceeding required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy

Rules (in each case subject to the limitations set forth in this paragraph 35 of this Interim Order) challenging the Prepetition Lien and Claim Matters (each such proceeding or pleading commencing a proceeding or other contested matter, a "Challenge"), by no later than the earlier of (A) the entry of an order confirming a plan of the Debtors or the sale of all or substantially of the Debtors' assets, or (B) seventy-five (75) days following the entry of this Interim Order (the earlier to occur of (A) and (B), the "Challenge Deadline" and, such period, the "Challenge Period"; *provided* that the approval of (A) as part of the Challenge Deadline is subject to entry of a Final Order granting such relief), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition ABL Agent, 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 commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal; *provided, further, that* any pleadings filed in connection with a Challenge shall set forth with specificity the basis for such Challenge and any Challenges not so specified prior to the expiration of the Challenge Period shall be deemed forever waived, released and barred. Notwithstanding the foregoing, if a chapter 11 trustee is appointed or the Chapter 11 Cases are converted to chapter 7 prior to the expiration of the Challenge Deadline, (1) the chapter 11 trustee or chapter 7 trustee, as applicable, shall have until the later of the Challenge Deadline or the thirtieth (30th) day after the appointment of the chapter 11 trustee or the conversion of the Chapter 11 Case to chapter 7, as applicable, to commence a Challenge, subject to any further extension by order of the Court for cause, and (2) if the Committee has asserted a Challenge prior to the Challenge Deadline, the chapter 11 trustee or chapter 7 trustee will stand in the shoes of the Committee in such Challenge. Nothing in this Interim Order vests or confers on any person or

entity (each as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, any Challenges with respect to the Prepetition Lien and Claim Matters, and any ruling on standing, if appealed, shall not stay or otherwise delay any sale of all or substantially all of the Debtors' assets in these Chapter 11 Cases. The filing of a motion seeking standing to file a Challenge before the Challenge Period, which attaches a proposed Challenge, shall extend the Challenge Period solely with respect to that party until two (2) business days after the Court approves the standing motion, or such other time period ordered by the Court in approving the standing motion.

(b) *Binding Effect*. To the extent no Challenge is timely 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 Chapter 11 Cases, and their successors and assigns, and in any Successor Case for all purposes and shall not be subject to challenge or objection by any party in interest, including, without limitation, a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtors' estates. Notwithstanding anything to the contrary herein, if any such proceeding is timely commenced, the Prepetition Lien and Claim Matters shall nonetheless remain binding on all 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 filed Challenge, which Challenge is successful as set forth in a

final judgment as provided in subparagraph (a) above. Upon a successful Challenge brought pursuant to this paragraph 35, the Court may fashion any appropriate remedy.

36. 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.

37. Section 506(c) Claims. Subject to entry of a Final Order granting such relief, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the DIP ABL Agent, the DIP ABL Lenders, or the Prepetition ABL Parties, 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 Agent, the DIP ABL Lenders or the Prepetition ABL Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.

38. No Marshaling/Applications of Proceeds. Subject to entry of a Final Order granting such relief, the DIP ABL Agent, the DIP ABL Lenders, and the Prepetition ABL Parties 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 ABL Documents notwithstanding any other agreement or provision to the contrary.

39. Section 552(b). Subject to entry of a Final Order granting such relief, the Prepetition ABL Parties 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 Parties, with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

40. Access to DIP Collateral. Subject to entry of a Final Order, upon expiration of the Remedies Notice Period, the DIP ABL Agent, DIP ABL Lenders and the Prepetition ABL Parties shall be permitted to (a) access and recover any and all DIP Collateral, and (b) enter onto any leased premises of any Debtor and exercise all of the Debtors' rights and privileges as lessee under such lease in connection with an orderly liquidation of the DIP Collateral; *provided, however*, that in the case of clause (b), the DIP ABL Agent, DIP ABL Lenders and/or Prepetition ABL Parties shall only be entitled to enter onto a leased premises after an Event of Default in accordance with (i) a separate written agreement by and between the DIP ABL Agent, DIP ABL Lenders and the Prepetition ABL Parties, as applicable, and any applicable landlord, (ii) pre-existing rights of the DIP ABL Agent, DIP ABL Lenders and the Prepetition ABL Parties, as applicable, and any applicable landlord under applicable non-bankruptcy law, (iii) consent of the applicable landlord, or (iv) entry of an order of this Court obtained by motion of the applicable DIP ABL Agent, DIP ABL Lender, or Prepetition ABL Party on such notice to the landlord as shall be required by this Court; *provided, however*, that solely with respect to rent due to a landlord of any such leased premises, the DIP ABL Agent, DIP ABL Lenders, and/or the Prepetition ABL Parties, as applicable, shall be obligated only to reimburse the Debtors for the payment of rent of the Debtors that first accrues after delivery of the Termination Declaration in accordance with paragraph 29 herein that is payable during the period of such occupancy by the DIP ABL Agent, DIP ABL Lenders, and/or Prepetition ABL Parties, as applicable, calculated on a daily per diem basis; *provided, further, that* nothing herein shall relieve the Debtors of their obligations pursuant to section 365(d)(3) of the Bankruptcy Code for the payment of rent that accrues prior to delivery

of the Termination Declaration through and including any assumption and/or rejection of any unexpired lease. Nothing herein shall require the DIP ABL Agent, DIP ABL Lenders or the Prepetition ABL Parties to assume any unexpired lease as a condition to the rights afforded in this paragraph.

41. Limits on Lender Liability. Subject to entry of a Final Order granting such relief, nothing in this Interim Order, any of the DIP ABL Documents, the Prepetition ABL Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP ABL Agent, the DIP ABL Lenders or the Prepetition ABL Parties of any liability for any claims arising from any activities by the Debtors in the operation of their business or in connection with the administration of these Chapter 11 Cases. The DIP ABL Agent, the DIP ABL Lenders and the Prepetition ABL Parties shall not, solely by reason of having made loans under the DIP ABL Facility or permitting the use of Cash Collateral, 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, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Interim Order or the DIP ABL Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP ABL Agent, the DIP ABL Lenders, or any of the Prepetition ABL Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

42. Insurance Proceeds and Policies. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP ABL Agent (on behalf of the DIP ABL Lenders) and the Prepetition ABL Agent (on behalf of the Prepetition ABL Parties) shall be, and

shall be deemed to be, without any further action or notice, named as additional insured, lender loss payee, mortgagee and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral (which shall not include directors and officers policies); *provided, however*, that the rights and liens granted on proceeds herein shall not impair or diminish any rights held by a landlord under applicable law to insurance proceeds for damage to the landlord's property, as provided in the Debtors' nonresidential real property leases and to the fullest extent permitted by applicable law.

43. 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 Debtors shall be jointly and severally liable for the obligations hereunder and all DIP ABL Obligations in accordance with the terms hereof and of the DIP ABL Facility and the DIP ABL Documents.

44. No Superior Rights of Reclamation. Based on the findings and rulings herein regarding the integrated nature of the DIP ABL Facility and the Prepetition ABL Documents, 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; rather, any such alleged claims arising or asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the DIP Liens as such claim had with the Prepetition ABL Liens.

45. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP ABL Agent's, DIP ABL Lenders' and Prepetition ABL Parties' right to seek any other or supplemental relief in respect of the Debtors; (b) any of the rights of any of the

DIP ABL Agent, DIP ABL Lenders and/or the Prepetition ABL Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Chapter 11 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 ABL Agent, DIP ABL Lenders or Prepetition ABL Parties.

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

47. Binding Effect of Interim Order. Subject to paragraph 35, 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, DIP ABL Agent, DIP ABL Lenders, Prepetition ABL Parties, all other creditors of any of the Debtors, any Committee (or any other court appointed committee) appointed in the Chapter 11 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 Chapter 11 Cases, any Successor Cases, or upon dismissal of any Chapter 11 Case or Successor Case.

48. No Modification of Interim Order. Until and unless the DIP ABL Obligations and the Prepetition ABL Obligations have been Paid in Full and all commitments to extend credit under the DIP ABL Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP ABL Agent or the Prepetition ABL Agent, (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, without limitation, 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 Chapter 11 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 ABL Agent or the Prepetition ABL Agent, for any order allowing use of Cash Collateral (other than as permitted during the Remedies Notice Period) resulting from DIP Collateral or Prepetition Collateral in a manner inconsistent with this Interim Order or the Final Order, as applicable; (c) without the prior written consent of the DIP ABL Agent, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided in the DIP ABL Documents; or (d) without the prior written consent of the Prepetition ABL Agent, any lien on any of the DIP Collateral with priority equal or superior to the Prepetition ABL 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 ABL Agent or the Prepetition ABL Agent, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP ABL Agent or the Prepetition ABL Agent.

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

50. Discharge. The DIP ABL 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 Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly Paid in Full in cash, on or before the effective date of such confirmed plan of reorganization, or each of the DIP ABL Agent, DIP ABL Lenders, and the Prepetition ABL Agent, as applicable, has otherwise agreed in writing. 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 DIP ABL Obligations being Paid in Full, 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 Agent, DIP ABL Lenders, and the Prepetition ABL 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.

51. 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 Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any

Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 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 ABL Agent, DIP ABL Lenders and Prepetition ABL Parties granted pursuant to this Interim Order and/or the DIP ABL Documents, notwithstanding the entry of any such order, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until: (i) in respect of the DIP ABL Facility, all the DIP ABL Obligations, pursuant to the DIP ABL Documents and this Interim Order, have been Paid in Full (such payment being without prejudice to any terms or provisions contained in the DIP ABL Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP ABL Facility are terminated; and (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 Paid in Full. The terms and provisions concerning the indemnification of the DIP ABL Agent and DIP ABL Lenders shall continue in the Chapter 11 Cases, in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, following termination of the DIP ABL Documents and/or the indefeasible repayment in full in cash of the DIP ABL Obligations.

52. Final Hearing. The Final Hearing to consider entry of the Final Order and final approval of the DIP ABL Facility is scheduled for **September 4, 2024 11:00 a.m. (Eastern time)**. Any objections or responses to the DIP Motion shall be filed on or prior to **August 28, 2024 at 4:00 p.m. (Eastern time)**. Any party objecting to the relief sought at the Final Hearing shall file and serve (via mail and e-mail) written objections, which objections shall be served on: (i) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, 920 North King Street,

Wilmington, Delaware 19801 (Attn: Joseph O. Larkin, Esq., and Jason M. Liberi, Esq.), and Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001 (Attn: Lisa Laukitis, Esq., Shana A. Elberg, Esq., and Angeline J. Hwang, Esq.); (ii) counsel to the DIP ABL Agent and the Prepetition ABL Agent, (a) Morgan Lewis & Bockius LLP, One Federal Street, Boston, MA 02110 (Attn: Christopher L. Carter, Esq.), and (b) Reed Smith LLP, 1201 Market Street, Suite 1500, Wilmington, DE 19801 (Attn: Kurt F. Gwynne, Esq.); (iii) counsel to the Committee (if appointed); and (v) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Rosa Sierra-Fox, Esq.).

53. Effective as of the Petition Date. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable effective as of the Petition Date immediately upon execution thereof.

54. 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 ABL Facility, and/or this Interim Order.

Dated: August 14th, 2024
Wilmington, Delaware

BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Budget

LL Flooring
Projected Liquidity

($ in '000)

Forecast week:	*Week 1* Forecast	*Week 2* Forecast	*Week 3* Forecast	*Week 4* Forecast	*Week 5* Forecast	*Week 6* Forecast	*Week 7* Forecast	*Week 8* Forecast	*Week 9* Forecast	*Week 10* Forecast	*Week 11* Forecast	*Week 12* Forecast	*Week 13* Forecast	*13 Weeks* Total
Beginning of week:	**11-Aug-24**	**18-Aug-24**	**25-Aug-24**	**1-Sep-24**	**8-Sep-24**	**15-Sep-24**	**22-Sep-24**	**29-Sep-24**	**6-Oct-24**	**13-Oct-24**	**20-Oct-24**	**27-Oct-24**	**3-Nov-24**	**11-Aug-24**
End of week:	**17-Aug-24**	**24-Aug-24**	**31-Aug-24**	**7-Sep-24**	**14-Sep-24**	**21-Sep-24**	**28-Sep-24**	**5-Oct-24**	**12-Oct-24**	**19-Oct-24**	**26-Oct-24**	**2-Nov-24**	**9-Nov-24**	**9-Nov-24**
Operating Cash Flow														
Operating Receipts	$ 11,244	$ 10,139	$ 10,290	$ 11,949	$ 14,124	$ 15,770	$ 115,405	$ 15,043	$ 17,160	$ 17,337	$ 16,541	$ 14,888	$ 13,275	$ 283,166
Operating Disbursements	$ (12,787)	$ (11,007)	$ (7,632)	$ (15,523)	$ (8,957)	$ (11,819)	$ (7,588)	$ (13,701)	$ (8,125)	$ (8,101)	$ (12,255)	$ (8,597)	$ (7,251)	$ (133,342)
Non-Operating Cash Flows	$ 3,360	$ (1,665)	$ (2,500)	$ 3,422	$ (3,310)	$ (3,360)	$ (109,260)	$ (1,456)	$ (1,385)	$ (11,978)	$ (915)	$ (918)	$ (790)	$ (130,755)
Total Cash Flow	**$ 1,817**	**$ (2,533)**	**$ 159**	**$ (152)**	**$ 1,857**	**$ 591**	**$ (1,443)**	**$ (113)**	**$ 7,649**	**$ (2,741)**	**$ 3,371**	**$ 5,373**	**$ 5,234**	**$ 19,069**
Liquidity														
Cash Balance (Book)														
Beginning Balance	$ 3,549	$ 5,367	$ 2,834	$ 2,993	$ 2,841	$ 4,697	$ 5,289	$ 3,846	$ 3,732	$ 11,382	$ 8,640	$ 12,012	$ 17,385	$ 3,549
Operating Receipts	11,244	10,139	10,290	11,949	14,124	15,770	115,405	15,043	17,160	17,337	16,541	14,888	13,275	283,166
Operating Disbursements	(12,787)	(11,007)	(7,632)	(15,523)	(8,957)	(11,819)	(7,588)	(13,701)	(8,125)	(8,101)	(12,255)	(8,597)	(7,251)	(133,342)
Non-Operating Cash Flows	3,360	(1,665)	(2,500)	3,422	(3,310)	(3,360)	(109,260)	(1,456)	(1,385)	(11,978)	(915)	(918)	(790)	(130,755)
Ending Balance (Book)	**$ 5,367**	**$ 2,834**	**$ 2,993**	**$ 2,841**	**$ 4,697**	**$ 5,289**	**$ 3,846**	**$ 3,732**	**$ 11,382**	**$ 8,640**	**$ 12,012**	**$ 17,385**	**$ 22,619**	**$ 22,619**
Availability	8,623	3,949	1,903	(6,304)	(11,038)	(17,489)								-
Liquidity	**$ 13,990**	**$ 6,783**	**$ 4,895**	**$ (3,464)**	**$ (6,340)**	**$ (12,201)**	**$ 3,846**	**$ 3,732**	**$ 11,382**	**$ 8,640**	**$ 12,012**	**$ 17,385**	**$ 22,619**	**$ 22,619**

Exhibit B

DIP ABL Agreement

Execution Version

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

Dated as of August [●], 2024,

among

LL FLOORING, INC.,
as the Lead Borrower, a Debtor, and a Debtor-in-Possession Under Chapter 11 of the Bankruptcy Code

for

the Borrowers Named Herein

the Guarantors Named Herein

BANK OF AMERICA, N.A.,
as Agent

and

the Lenders Party Hereto

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS 2

1.01 Defined Terms 2
1.02 Other Interpretive Provisions 43
1.03 Accounting Terms 44
1.04 [Reserved]. 44
1.05 Times of Day 44
1.06 Letter of Credit Amounts 44
1.07 Divisions 44
1.08 UCC Terms 45
1.09 Interest Rates 45

ARTICLE II THE REVOLVING LOAN COMMITMENTS AND CREDIT EXTENSIONS 45

2.01 Committed Revolving Loans. 45
2.02 Borrowings of Committed Revolving Loans 46
2.03 Letters of Credit. 48
2.04 [Reserved]. 55
2.05 Prepayments. 56
2.06 Termination or Reduction of Revolving Loan Commitments. 56
2.07 Repayment of Obligations 57
2.08 Interest. 57
2.09 Fees 58
2.10 Computation of Interest and Fees 58
2.11 Evidence of Debt. 58
2.12 Payments Generally; Agent's Clawback 59
2.13 Sharing of Payments by Lenders. 60
2.14 Settlement Amongst Lenders. 61
2.15 [Reserved]. 61
2.16 Defaulting Lenders. 61
2.17 Super Priority Nature of Obligations and Agent's Liens; Payment of Obligations 63

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY; APPOINTMENT OF LEAD BORROWER 64

3.01 Taxes. 64
3.02 Illegality 68
3.03 [Reserved]. 68
3.04 Increased Costs. 68
3.05 [Reserved] 69
3.06 Mitigation Obligations; Replacement of Lenders 69
3.07 Survival 70
3.08 Designation of Lead Borrower as Borrowers' Agent. 70

ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS 71

4.01 Conditions to Effectiveness 71
4.02 Conditions to all Credit Extensions 73

ARTICLE V REPRESENTATIONS AND WARRANTIES 74

5.01 Existence, Qualification and Power 74

TABLE OF CONTENTS
(continued)

Page

5.02 Authorization; No Contravention 74
5.03 Governmental Authorization; Other Consents 74
5.04 Binding Effect 74
5.05 Financial Statements; No Material Adverse Effect. 75
5.06 Litigation 75
5.07 No Default 75
5.08 Ownership of Property; Liens. 75
5.09 Environmental Compliance 76
5.10 Insurance 77
5.11 Taxes 77
5.12 ERISA Compliance. 77
5.13 Subsidiaries; Equity Interests 78
5.14 Margin Regulations; Investment Company Act. 78
5.15 Disclosure 78
5.16 Compliance with Laws 79
5.17 Intellectual Property; Licenses, Etc. 79
5.18 Labor Matters 79
5.19 Security Documents. 80
5.20 [Reserved]. 80
5.21 Deposit Accounts; Credit Card Arrangements. 80
5.22 Brokers 80
5.23 Customer and Trade Relations 80
5.24 Material Contracts 81
5.25 Casualty 81
5.26 EEA Financial Institution 81
5.27 Beneficial Ownership Certification 81
5.28 Sanctions Concerns and Anti-Corruption Laws 81
5.29 Approved Budget 81
5.30 Chapter 11 Cases; Orders. 81

ARTICLE VI AFFIRMATIVE COVENANTS 82

6.01 Financial Statements 82
6.02 Certificates; Other Information 83
6.03 Notices 84
6.04 Payment of Obligations 85
6.05 Preservation of Existence, Etc 86
6.06 Maintenance of Properties 86
6.07 Maintenance of Insurance. 86
6.08 Compliance with Laws 87
6.09 Books and Records; Accountants 87
6.10 Inspection Rights. 88
6.11 Additional Loan Parties 88
6.12 Cash Management 89
6.13 Information Regarding the Collateral 89
6.14 Reserved 89
6.15 Environmental Laws. 89
6.16 Further Assurances. 90
6.17 Compliance with Terms of Leaseholds 90

TABLE OF CONTENTS
(continued)

Page

6.18 Material Contracts 90
6.19 Collateral Updates 91
6.20 Use of Proceeds 91
6.21 Approved Budget 91
6.22 Case Milestones 92
6.23 Debtors' Advisors; Liquidators 92
6.24 Agent's Advisors 92
6.25 Debtor-in-Possession Obligations 93
6.26 Adequate Protection Payments 93
6.27 First Day Orders 93

ARTICLE VII NEGATIVE COVENANTS 93

7.01 Liens 93
7.02 Investments 93
7.03 Indebtedness; Disqualified Stock. 93
7.04 Fundamental Changes 94
7.05 Dispositions 94
7.06 Restricted Payments 94
7.07 Prepayments of Indebtedness 94
7.08 Change in Nature of Business. 95
7.09 Transactions with Affiliates 95
7.10 Burdensome Agreements 95
7.11 Use of Proceeds 95
7.12 Amendment of Material Documents 96
7.13 Fiscal Year 96
7.14 Minimum Liquidity. 96
7.15 [Reserved]. 96
7.16 Sanctions 96
7.17 Anti-Corruption Laws 96
7.18 Orders 96
7.19 Reclamation Claims 96
7.20 Insolvency Proceeding Claims 96
7.21 Bankruptcy Actions 96

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES 97

8.01 Events of Default 97
8.02 Remedies Upon Event of Default 102
8.03 Application of Funds 104
8.04 License; Access; Cooperation 105
8.05 Lift of Stay; Stay of Proceedings 106

ARTICLE IX THE AGENT 106

9.01 Appointment and Authority. 106
9.02 Rights as a Lender 106
9.03 Exculpatory Provisions 107
9.04 Reliance by Agent 108
9.05 Delegation of Duties 108
9.06 Resignation of Agent 108

TABLE OF CONTENTS
(continued)

Page

9.07 Non-Reliance on Agent and Other Lenders 110
9.08 [Reserved]. 110
9.09 Agent May File Proofs of Claim 110
9.10 Collateral and Guaranty Matters 112
9.11 Notice of Transfer 112
9.12 Reports and Financial Statements 112
9.13 Agency for Perfection 113
9.14 Indemnification of Agent 113
9.15 Relation among Lenders 114
9.16 Certain ERISA Matters 114
9.17 Recovery of Erroneous Payments 115

ARTICLE X MISCELLANEOUS 115

10.01 Amendments, Etc 115
10.02 Notices; Effectiveness; Electronic Communications 117
10.03 No Waiver; Cumulative Remedies 119
10.04 Expenses; Indemnity; Damage Waiver 119
10.05 Payments Set Aside 123
10.06 Successors and Assigns 123
10.07 Treatment of Certain Information; Confidentiality 127
10.08 Right of Setoff 127
10.09 Interest Rate Limitation 128
10.10 Counterparts; Integration; Effectiveness 128
10.11 Survival 128
10.12 Severability 129
10.13 Replacement of Lenders 129
10.14 Governing Law; Jurisdiction; Etc 130
10.15 Waiver of Jury Trial 130
10.16 No Advisory or Fiduciary Responsibility 131
10.17 USA PATRIOT Act Notice 131
10.18 Foreign Assets Control Regulations 132
10.19 Time of the Essence 132
10.20 Reserved 132
10.21 Press Releases 132
10.22 Additional Waivers 132
10.23 No Strict Construction 133
10.24 Attachments 134
10.25 Electronic Execution of Assignments and Certain Other Documents. 134
10.26 Keepwell 135
10.27 Conflict of Terms 135
10.28 Acknowledgement and Consent to Bail-In of an Affected Financial Institutions 135
10.29 Acknowledgement Regarding Any Supported QFCs. 136

SCHEDULES

1.01	Borrowers
1.01(A)	Excluded Domestic Subsidiaries
2.01	Revolving Loan Commitments and Applicable Percentages
2.03(a)	Existing Letters of Credit
5.01	Loan Parties Organizational Information
5.08(b)(1)	Owned Real Estate
5.08(b)(2)	Leased Real Estate
5.09	Environmental Matters
5.10	Insurance
5.13	Subsidiaries; Other Equity Investments
5.18	Collective Bargaining Agreements
5.21(a)	DDAs
5.21(b)	Credit Card Arrangements
5.24	Material Contracts
6.02	Financial and Collateral Reporting
7.01	Existing Liens
7.02	Existing Investments
7.03	Existing Indebtedness
7.09	Affiliate Transactions
7.10	Burdensome Agreements
10.02	Agent's Office; Certain Addresses for Notices

EXHIBITS

Form of

A-1	Committed Loan Notice
A-2	[Reserved]
B-1	Form of Note
B-2	[Reserved]
C	Compliance Certificate
D	Borrowing Base Certificate
E	Assignment and Assumption
F	Information Certificate

ANNEXES

A	Approved Budget

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

This **SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT** (as amended, amended and restated, restated, supplemented, modified and/or otherwise in effect from time to time, this "Agreement") is entered into as of August [●], 2024 among:

LL FLOORING, INC., a Delaware corporation (the "Lead Borrower"),

the Persons named on Schedule 1.01 hereto (collectively, the "Borrowers"),

the Guarantors party hereto,

each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and

BANK OF AMERICA, N.A., as Agent (as defined below).

WHEREAS, on August [●], 2024 (the "Petition Date"), the Lead Borrower, the other Borrowers and the Guarantors (collectively, the "Debtors", and each individually, a "Debtor") commenced Chapter 11 Case Nos. [●], as administratively consolidated at Chapter 11 Case No. [●] (collectively, the "Chapter 11 Cases" and each individually, a "Chapter 11 Case") in the United States Bankruptcy Court for the District of Delaware (the "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 Fourth Amended and Restated Credit Agreement, dated as of March 29, 2019, among the Borrowers, the Guarantors, Bank of America, N.A., as Prepetition ABL Agent, the other lenders party thereto (the "Prepetition Lenders") (as amended by the First Amendment to Fourth Amended and Restated Credit Agreement, dated as of April 17, 2020, as further amended by the Second Amendment to Fourth Amended and Restated Credit Agreement, dated as of April 30, 2021, as further amended by the Third Amendment to Fourth Amended and Restated Credit Agreement dated as of December 27, 2022 and as further amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the "Prepetition Credit Agreement");

WHEREAS, as of the close of business on the Petition Date, (i) the Prepetition Lenders under the Prepetition Credit Agreement were owed approximately $99,099,225.47 in outstanding principal balance of Revolving Loans (as defined in the Prepetition Credit Agreement) and (ii) there were $10,600,000.00 in maximum aggregate amounts available to be drawn under outstanding Letters of Credit (as defined in the Prepetition Credit Agreement), plus interest, fees, costs and expenses and all other Prepetition Obligations under the Prepetition Credit Agreement.

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

WHEREAS, the Borrowers have requested, and, upon the terms set forth in this Agreement, the Lenders have agreed to make available to the Borrowers, a senior secured super-priority asset-based credit facility up to the lesser of (i) $130,000,000 and (ii) the amount provided therefor in the Interim Order or

the Final Order (each as defined below), whichever is then in effect, available from time to time during the Availability Period (as defined below) (the "Credit Facility");

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

WHEREAS, the Borrowers' and Guarantors' 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 power of the Borrowers and facilitate the administration of the Chapter 11 Cases and their loan relationship with the Agent and the Lenders, all to the mutual advantage of the Borrower and the 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 Agent's and the Lenders' willingness to extend financial accommodations to the Borrowers, and to administer the Borrowers' and Guarantors' collateral security therefor, on a combined basis 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 Guarantors' mutual and collective enterprise; and

WHEREAS, all capitalized terms used in this Agreement, including in these Recitals, shall have the meanings ascribed to them in Section 1.01, and, for purposes of this Agreement and the other Loan Documents, the rules of construction set forth in Section 1.02 shall govern. All Schedules, Exhibits, Annexes, and other attachments hereto, or expressly identified in this Agreement, are incorporated by reference, and taken together with this Agreement, shall constitute a single agreement. These Recitals shall be construed as part of this Agreement.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

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

"Acceptable Document of Title" means, with respect to any Inventory, a waybill or Document (as defined in the UCC) that (a) is issued by a common carrier which is not an Affiliate of the foreign vendor or any Loan Party which is in actual possession of such Inventory, (b) is issued to the order of a Borrower or, while a Default or Event of Default exists, if so requested by the Agent, to the order of the Agent, (c) is not subject to any Lien (other than in favor of the Agent and Permitted Encumbrances), and (d) the Agent has not notified the Lead Borrower that such waybill or Document is not in form and content reasonably acceptable to the Agent.

"Accommodation Payment" as defined in Section 10.22(c).

"ACH" means automated clearing house transfers.

"Acquisition" means, with respect to any Person (a) a purchase of a Controlling interest in the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of another Person or of any business unit of another Person, (c) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, or (d) any acquisition of any Store locations of any Person, in each case in any transaction or group of transactions which are part of a common plan.

"Act" shall have the meaning provided in Section 10.17.

"Actual Cash Receipts" means with respect to any period, the sum, for such period, of all actual receipts for all line items which comprise "Total Operating Receipts" (as set forth in the Approved Budget), on a cumulative basis, in each case, as determined by reference to the Approved Budget as then in effect.

"Actual Disbursement Amount" means with respect to any period, the sum, for such period, of all actual disbursements for all line items which comprise "Total Operating Disbursements" (as set forth in the Approved Budget), on a cumulative basis, in each case, as determined by reference to the Approved Budget as then in effect.

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

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

"Affected Financial Institution" means any EEA Financial Institution or UK Financial Institution.

"Affiliate" means, with respect to any Person, (i) another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified, (ii) any director, officer, managing member, partner, trustee, or beneficiary of that Person, (iii) any other Person directly or indirectly holding 10% or more of any class of the Equity Interests of that Person, and (iv) any other Person 10% or more of any class of whose Equity Interests is held directly or indirectly by that Person. For the avoidance of doubt, Banc of America Merchant Services, LLC shall at all times be deemed to be an Affiliate of Bank of America.

"Agent" means Bank of America in its capacity as administrative agent and collateral agent under any of the Loan Documents, or any successor thereto.

"Agent's Advisors" means each of Berkeley Research Group, LLC, and any other 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 Agent.

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

"Aggregate Revolving Loan Commitments" means the sum of the Revolving Loan Commitments of all the Revolving Loan Lenders. As of the Closing Date, the Aggregate Revolving Loan Commitments shall be $130,000,000.

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

"Allocable Amount" has the meaning specified in Section 10.22(c).

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

"Applicable Margin" means 2.25% per annum.

"Applicable Percentage" means, in respect of the Revolving Loan Facility, with respect to any Revolving Loan Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Loan Facility represented by such Revolving Loan Lender's Revolving Loan Commitment at such time. If the commitment of each Revolving Loan Lender to make Revolving Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 2.06 or Section 8.02 or if the Aggregate Revolving Loan Commitments have expired, then the Applicable Percentage of each Revolving Loan Lender shall be determined based on the Applicable Percentage of such Revolving Loan Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means, at any time of calculation, a per annum rate equal to the Applicable Margin.

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

"Approved Budget" the budget prepared by the Borrowers in the form of Annex A and initially furnished to the Agent on the Closing Date and which is approved by, and in form and substance reasonably satisfactory to, the Agent and the Required Lenders in their reasonable discretion, as the same may be updated, modified or supplemented from time to time as provided in Section 6.21.

"Approved Budget Variance Report" a weekly report provided by the Lead Borrower to the Agent (i) showing Actual Cash Receipts and the Actual Disbursement Amount for the last day of the Prior Week and the Cumulative Four Week Period noting therein all variances, on a cumulative basis for the Cumulative Four Week Period, from the Budgeted Cash Receipts and the Budgeted Disbursement Amount for such period set forth in the Approved Budget as in effect for such period, and (ii) which shall include explanations for all material variances, which report shall be certified by a Responsible Officer of the Lead Borrower. The Approved Budget Variance Report shall be in a form, and shall contain supporting information, satisfactory to the Agent and the Required Lenders in their reasonable discretion.

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

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

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

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

"Audited Financial Statements" means the audited consolidated balance sheet of the Parent and its Subsidiaries for the Fiscal Year ended December 31, 2023, and the related consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year of the Parent and its Subsidiaries, including the notes thereto.

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

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

"Availability Reserves" means, (I) without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves (other than the Carve-Out Availability Reserves) as the Agent from time to time determines in its Permitted Discretion as being appropriate (a) to reflect the impediments to the Agent's ability to realize upon the Collateral included in the Revolving Borrowing Base, (b) to reflect claims and liabilities that the Agent determines in its Permitted Discretion will need to be satisfied in connection with the realization upon the Collateral included in the Revolving Borrowing Base, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Revolving Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party, or (d) to reflect that a Default or an Event of Default then exists and (II) the Carve-Out Availability Reserve. Without limiting the generality of the foregoing, Reserves under clause (I) of Availability Reserves may include, in the Agent's Permitted Discretion, (but are not limited to) reserves based on (without duplication): (i) rent; (ii) customs duties, and other costs to release Inventory which is being imported into the United States; (iii) outstanding Taxes and other governmental charges due and owing by a Borrower but unpaid, including, without limitation, ad valorem, real estate, personal property, sales, claims of the PBGC and other Taxes which may have priority over the interests of the Agent in the Collateral; (iv) salaries, wages and benefits due and owing to employees of any Borrower but unpaid, (v) Customer Credit Liabilities, (vi) customer deposits, (viii) reserves for reasonably anticipated changes in the Appraised Value of Eligible Inventory between appraisals, (viii) unpaid warehousemen's or bailee's charges due and owing by any Borrower relating to Inventory of any Borrower and other Permitted Encumbrances which may have priority over the interests of the Agent in the Collateral, (ix) Cash Management Reserves, (x) Bank Products Reserves, (xi) Realty Reserves and (xii) Lease Reserves.

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

"Bail-In Legislation" means with respect to (a) 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, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, or (b) the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank of America" means Bank of America, N.A. and its successors.

"Bank Product Reserves" means such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate to reflect the liabilities and obligations of the Loan Parties with respect to Bank Products then provided or outstanding.

"Bank Products" means any services of facilities provided to any Loan Party by the Agent, any Revolving Loan Lender, or any of their respective Affiliates, including, without limitation, on account of (a) Swap Contracts and (b) supply chain finance services (including, without limitation, trade payable services and supplier accounts receivable purchases), but excluding Cash Management Services.

"Bankruptcy Code" means Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

"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.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate," and (c) Term SOFR plus 1.00% (which rate, for the avoidance of doubt, shall not be less than the Floor). The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

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

"Basel III" means the set of reform measures designed to improve the regulation, supervision and risk management within the banking sector, as developed by the Basel Committee on Banking Supervision.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

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

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

"Borrowing" means a Committed Revolving Loan Borrowing.

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

"Budgeted Cash Receipts" means, with respect to any period, the sum, for such period, of all projected receipts for all line items which comprise "Total Operating Receipts" (as set forth in the Approved Budget), in each case, as determined in a manner consistent with the Approved Budget.

"Budgeted Disbursement Amount" means with respect to any period, the sum, for such period, of all projected disbursements for all line items which comprise "Total Operating Disbursements" (as set forth in the Approved Budget), in each case, as determined in a manner consistent with the Approved Budget.

"Budgeted Excess Availability" means, as of any date of determination, the budgeted amounts as of such date that correspond to the line item "Excess Availability" in the Approved Budget for such period.

"Budgeted Revolver Balance" means as of any date of determination, the budgeted amounts as of such date that correspond to the line item "ABL Balance" in the Approved Budget for such period.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Agent's Office is located.

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

"Carve-Out" has the meaning given to such term in the Interim Order (or Final Order, when applicable).

"Carve-Out Availability Reserve" means an amount equal to the sum of (i) the Post-Carve-Out Trigger Notice Cap (as such term is defined in the Orders), plus (ii) any additional amount to the extent of any insufficient funding of the Pre-Carve-Out Trigger Notice Reserve (as such term is defined in the Orders) as of the most recent DIP Carve-Out Reserve Amount Report Date (as such term is defined in the Orders), plus (iii) an amount equal to the Budgeted Cushion Amount (as such term is defined in the Orders).

"Case Milestones" means the "Case Milestones" as set forth on Exhibit C to the Interim Order (or the Final Order, when applicable).

"Cash Collateral Account" means a non-interest bearing account established by one or more of the Loan Parties with Bank of America, and in the name of, the Agent (or as the Agent shall otherwise direct) and

under the sole and exclusive dominion and control of the Agent, in which deposits are required to be made in accordance with Section 2.03(g) or 8.02(c).

"Cash Collateralize" means to deposit in the Cash Collateral Account or to pledge and deposit with or deliver to the Agent, for the benefit of one or more of the Agent, the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect thereof (as the context may require), L/C Obligations, cash or deposit account balances or, if the Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Agent and the L/C Issuer. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Management Order" the order of the 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 Agent and the Required Lenders, which among other matters authorizes the Debtors to maintain their existing cash management and treasury arrangements (as set forth in the Prepetition Credit Agreement) or such other arrangements as shall be acceptable to the Agent and the Required Lenders in all material respects.

"Cash Management Reserves" means such reserves as the Agent, from time to time, 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 cash management services provided to any Loan Party by the Agent or any Revolving Loan Lender or any of their respective Affiliates, including, without limitation, (a) ACH transactions, (b) treasury and/or cash management services, including, without limitation, controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) credit card processing services and other merchant services (other than those constituting a line of credit), and (d) credit or debit cards and purchase cards.

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

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

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

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

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

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 35% or more of the Equity Interests of the Parent entitled to vote for members of the board of directors or equivalent governing body of the Parent on a fully-diluted basis (and taking into account all such Equity Interests that such "person" or "group" has the right to acquire pursuant to any option right); or

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(c) any "change in control" or similar event as defined in any Organization Document of any Loan Party or any document governing Material Indebtedness of any Loan Party; or

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

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

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

"CME" means CME Group Benchmark Administration Limited.

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

"Collateral" means (a) any and all "Collateral" or "Mortgaged Property" as defined in any applicable Security Document and all other property that is or is intended under the terms of the Security Documents to be subject to Liens in favor of the Agent and (b) all "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 Prepetition Loan Documents.

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

"Commitment Fee" has the meaning specified in Section 2.09(a).

"Commitment Fee Percentage" means 0.25% per annum.

"Committed Loan Notice" means a notice of a Committed Revolving Loan Borrowing, which, if in writing, shall be substantially in the form of Exhibit A-1.

"Committed Revolving Loan" has the meaning specified in Section 2.01(a).

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

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

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

"Communication" has the meaning set forth in Section 10.25.

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

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

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

"Cost" means the lower of cost or market value of Inventory, based upon the Borrowers' accounting practices, known to the Agent, which practices are in effect on the Closing Date as such calculated cost is determined from invoices received by the Borrowers, the Borrowers' purchase journals or the Borrowers' stock ledger. "Cost" does not include inventory capitalization costs or other non-purchase price charges (such as freight) used in the Borrowers' calculation of cost of goods sold.

"Court" has the meaning specified in the Recitals to this Agreement.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning set forth in Section 10.29.

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

credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., Synchrony Financial, Synchrony Canada and Novus Services, Inc. and other issuers approved by the Agent.

"Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer, including, without limitation, PayPal and, upon at least five (5) Business Days prior notice to the Agent, any other reputable servicing or processing agent, factor, financial intermediary or provider who has established a similar electronic commerce or payment method.

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

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

"Credit Facility" has the meaning specified in the Recitals to this Agreement.

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

"Cumulative Four Week Period" 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 value at such time of (a) outstanding gift certificates and gift cards of the Borrowers entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, and (b) outstanding merchandise credits of the Borrowers, including, without limitation, any MDL Vouchers issued prior to the Closing Date or vouchers issued by the Borrowers prior to the Closing Date in connection with any litigation and/or settlement related to the Gold Litigation (as defined in the Prepetition Credit Agreement).

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

"DDA" means each checking, savings or other demand deposit account maintained by any of the Loan Parties. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral

and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any such DDA.

"Debtors" has the meaning assigned to such term in the Recitals to this Agreement.

"Debtors' Advisors" means, collectively, Houlihan Lokey and AlixPartners, LLP (including each of its Affiliates).

"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 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.

"Defaulting Lender" means, subject to Section 2.16(b), any Revolving Loan Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder, or (ii) pay to the Agent, the L/C Issuer or any other Revolving Loan Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified the Lead Borrower, the Agent, the L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (c) has failed, within three Business Days after written request by the Agent or the Lead Borrower, to confirm in writing to the Agent and the Lead Borrower that it will comply with its prospective funding obligations hereunder (provided that such Revolving Loan Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agent and the Lead Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; provided that a Revolving Loan Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Revolving Loan Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Revolving Loan Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Revolving Loan Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Agent that a Revolving Loan Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Revolving Loan Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) as of the date established therefor by the Agent in a written notice of such determination, which shall be delivered by the Agent to the Lead Borrower, the L/C Issuer and each other Revolving Loan Lender promptly following such determination.

"Default Rate" means (a) when used with respect to Loans, an interest rate equal to the interest rate (including the Applicable Margin) otherwise applicable to such Loan plus two percent (2%) per annum, (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate for Standby Letters of Credit and Commercial Letters of Credit, plus two percent (2%) per annum, and (c) with respect to all other Obligations, an interest rate equal to the Base Rate, plus the then Applicable Margin, plus two percent (2%) per annum.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Deposit Account Control Agreement" has the meaning specified in the Security Agreement.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory is the subject of any Sanction.

"Disclosed Internal Control Event" means the Internal Control Event disclosed in the Parent's Annual Report on Form 10-K for the Fiscal Year ended December 31, 2018, filed with the SEC on March 18, 2019, related to the classification of imported products under the Harmonized Tariff Schedule.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction), whether in one transaction or in a series of transactions, of any property (including, without limitation, any Equity Interests other than Equity Interests of the Parent) by any Person (or the granting of any option or other right to do any of the foregoing), 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 Stock" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable (other than solely for Equity Interests that do not constitute Disqualified Stock), pursuant to a sinking fund obligation or otherwise, or redeemable (other than solely for Equity Interests that do not constitute Disqualified Stock) at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Loans mature; provided, however, that only the portion of such Equity Interest which so matures or is so mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock.

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

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

"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.

"Electronic Copy" has the meaning set forth in Section 10.25.

"Electronic Record" has the meaning set forth in Section 10.25.

"Electronic Signature" has the meaning set forth in Section 10.25.

"Eligible Assignee" means (a) a Credit Party or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of $250,000,000; (c) an Approved Fund; (d) any Person to whom a Credit Party assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Credit Party's rights in and to a material portion of such Credit Party's portfolio of asset based credit facilities, and (e) any other Person (other than a natural Person) satisfying the requirements of Section 10.06(b) hereof; provided, that notwithstanding the foregoing, "Eligible Assignee" shall not include a Loan Party or any of their respective Affiliates or Subsidiaries.

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

(a) Credit Card Receivables which do not constitute an "account" or "payment intangible" (as defined in the UCC);

(b) Credit Card Receivables that have been outstanding for more than five (5) Business Days from the date of sale;

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

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

(e) Credit Card Receivables as to which a Credit Card Issuer or a Credit Card Processor has the right under certain circumstances to require a Loan Party to repurchase the Credit Card Receivables from such Credit Card Issuer or Credit Card Processor;

(f) Credit Card Receivables due from a Credit Card Issuer or a Credit Card Processor of the applicable credit card which (i) is the subject of a proceeding under any Debtor Relief Law or (ii) is a target of Sanctions;

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

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

(i) Credit Card Receivables which the Agent determines in its Permitted Discretion to be uncertain of collection.

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

(a) which has been shipped from a foreign location for receipt by a Borrower, but which has not yet been delivered to such Borrower, which In-Transit Inventory has been in transit (i) with respect to each of the first three weeks following the Closing Date, for forty-five (45) days or less from the date of shipment of such Inventory, (ii) with respect to each of the fourth and fifth weeks following the Closing Date, for thirty (30) days or less from the date of shipment of such Inventory and (iii) at all times thereafter, for fifteen (15) days or less from the date of shipment of such Inventory;

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

(c) for which an Acceptable Document of Title has been issued, and in each case as to which the Agent has possession or control (as defined in the UCC) to the extent applicable under the UCC over the bills of lading and other documents of title which evidence ownership of the subject Inventory pursuant to a Customs Broker/Carrier Agreement;

(d) which is insured by marine cargo insurance and other insurance in accordance with the provisions of this Agreement;

(e) for which payment of the purchase price has been made by the Borrowers or the purchase price is supported by a Commercial Letter of Credit; and

(f) which otherwise would constitute Eligible Inventory if located in the United States;

provided that the Agent may, in its Permitted Discretion, exclude any particular Inventory from the definition of "Eligible In-Transit Inventory", including, without limitation, in the event the Agent reasonably determines that such Inventory is subject to any Person's right of reclamation, repudiation, stoppage in transit or any event has occurred or the Agent determines in its Permitted Discretion is reasonably anticipated to arise which may otherwise materially and adversely impact the value of such Inventory or the ability of the Agent to realize upon such Inventory.

"Eligible Inventory" means, as of the date of determination thereof, without duplication, (x) Eligible In-Transit Inventory, (y) Eligible Unpaid In-Transit Inventory and (z) items of Inventory of a Borrower that are finished goods, merchantable and readily saleable to the public in the ordinary course of the Borrowers' business deemed by the Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Revolving Borrowing Base, in each case that, except as otherwise agreed by the Agent, (i) complies in all material respects with each of the representations and warranties respecting Inventory made by the Borrowers in the Loan Documents, and (ii) is not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Agent, in its Permitted Discretion, the following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents and other Permitted Encumbrances not having priority over, or that are *pari passu* with, the Lien of the Agent under applicable Law);

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

(c) Inventory (other than Eligible In-Transit Inventory) that is not located in the United States of America (excluding territories or possessions of the United States) at a location that is owned or leased by a Loan Party, except (i) Inventory in transit between such owned or leased locations, (ii) to the extent that the Borrowers have furnished the Agent with (A) any UCC financing statements or other documents that the Agent may determine to be necessary to perfect its security interest in such Inventory at such location, and (B) a Collateral Access Agreement executed by the Person owning any such location, or (iii) with respect to which Agent has established an Availability Reserve or an Inventory Reserve in its Permitted Discretion;

(d) [reserved];

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

(f) Inventory that is not subject to a perfected first-priority security interest in favor of the Agent (other than Permitted Encumbrances not having priority over or that are *pari passu* with, the Lien of the Agent under applicable Law);

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

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

"Eligible Real Estate" means, as of any date of determination thereof, Real Estate which, except as otherwise agreed by the Agent, in its Permitted Discretion, satisfies all of the following conditions:

(a) a Borrower owns such Real Estate in fee simple absolute;

(b) the Agent shall have received evidence that all actions have been taken that the Agent may reasonably deem necessary or appropriate in order to create valid first and subsisting Liens (subject only to Permitted Encumbrances (other than Liens securing Indebtedness) which have priority over the Lien of the Agent by operation of Law or otherwise reasonably acceptable to the Agent) on the property described in the Mortgages;

(c) the Agent and the Lenders shall have received an appraisal of such Real Estate complying with the requirements of FIRREA by a third party appraiser reasonably acceptable to the Agent and each Lender, and otherwise in form and substance reasonably satisfactory to the Agent and each Lender; and

(d) the applicable Loan Party has executed and delivered to the Agent a Mortgage with respect to such Real Estate;

(e) such Real Estate is used by a Loan Party for offices or as a Store or distribution center;

(f) as to any particular property, the Loan Party is in compliance in all material respects with the representations, warranties and covenants set forth in the Mortgage relating to such Real Estate;

(g) the Agent shall have received fully paid American Land Title Association Lender's Extended Coverage title insurance policies or marked-up title insurance commitments having the effect of a policy of title insurance (the "Mortgage Policies") in form and substance, with the endorsements reasonably required by the Agent (to the extent available at commercially reasonable rates) and in amounts reasonably acceptable to the Agent, issued, coinsured and reinsured (to the extent required by the Agent) by title insurers reasonably acceptable to the Agent, insuring the Mortgages to be valid first and subsisting Liens on the property or leasehold interests described therein, free and clear of all defects (including, but not limited to, mechanics' and materialmen's Liens) and encumbrances, excepting only Permitted Encumbrances having priority over the Lien of the Agent under Law or otherwise reasonably acceptable to the Agent;

(h) the Agent shall have received American Land Title Association/American Congress on Surveying and Mapping form surveys, for which all necessary fees (where applicable) have been paid, certified to the Agent and the issuer of the Mortgage Policies in a manner reasonably satisfactory to the Agent by a land surveyor duly registered and licensed in the states in which the property described in such surveys is located and reasonably acceptable to the Agent, showing all buildings and other improvements, the location of any easements, parking spaces, rights of way, building set-back lines and other dimensional regulations and the absence of encroachments, either by such improvements or on to such property, and other defects, other than encroachments and other defects reasonably acceptable to the Agent;

(i) the Agent shall have received a Phase I Environmental Site Assessment in accordance with ASTM Standard E1527-05, in form and substance reasonably satisfactory to the Agent and the Lenders, from an environmental consulting firm reasonably acceptable to the Agent and the Lenders, which report shall identify recognized environmental conditions and shall to the extent possible quantify any related costs and liabilities, associated with such conditions and the Agent shall be satisfied with the nature and amount of any such matters, and, if requested by the Agent after receipt of a Phase I Environmental Site Assessment, such further environmental assessments or reports to the extent such further assessments or reports are recommended in the Phase I Environmental Site Assessment;

(j) the applicable Loan Party shall have delivered to the Agent and the Lenders evidence of flood insurance naming the Agent, on behalf of the Lenders, as mortgagee if and to the extent required by the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended and in effect, which shall be reasonably satisfactory in form and substance to the Agent; and

(k) the applicable Loan Party shall have delivered such other information and documents as may be reasonably requested by the Agent and the Lenders, including, without limitation, such as may be necessary to comply with FIRREA.

"Eligible Unpaid In-Transit Inventory" means Eligible Inventory that (a) would otherwise constitute Eligible In-Transit Inventory, except for which a payment of the purchase price has not yet been made by a Borrower or supported by a Commercial Letter of Credit as required pursuant to clause (e) of the definition of Eligible In-Transit Inventory and (b) satisfies such other criteria as the Agent may, in its Permitted Discretion, establish from time to time after the Closing Date.

"Environmental Compliance Reserve" means, with respect to Eligible Real Estate, such reserves which the Agent, from time to time in its Permitted Discretion establishes for estimable amounts that are reasonably likely to be expended by any of the Loan Parties in order for such Loan Party and its operations and property (a) to comply with any notice from a Governmental Authority asserting non-compliance with Environmental Laws with respect to Eligible Real Estate, or (b) to correct any such non-compliance with Environmental Laws with respect to Eligible Real Estate or to provide for any Environmental Liability.

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

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

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

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

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

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

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Lead Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Lead Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Lead Borrower or any ERISA Affiliate.

"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 specified in Section 8.01.

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

(a) the Revolving Loan Cap

minus

(b) the sum of (i) the Total Outstandings at such time and (ii) the Outstanding Amount of all Prepetition Revolving Credit Loans and Prepetition L/C Obligations at such time.

"Excluded Disbursement" has the meaning specified in the Orders.

"Excluded Domestic Subsidiary" means each of the Domestic Subsidiaries identified on Schedule 1.01(A), if any.

"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 guaranty of such Loan Party under the Facility Guaranty of, or the grant under a Loan Document by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation 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 10.26 hereof and any and all guarantees of such Loan Party's Swap Obligations by other Loan Parties) at the time the guaranty 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 Swap Contracts for which such guaranty or security interest becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (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 Recipient being organized under the laws of, or having its principal office or, in the case of

any Lender, its 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 Revolving Loan Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Revolving Loan Commitment (other than pursuant to an assignment request by the Lead Borrower under Section 10.13) or (ii) such Lender changes its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

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

"Existing Letters of Credit" means the letters of credit described in Schedule 2.03(a).

"Facility Guaranty" means the Guaranty made as of the date hereof by the Guarantors in favor of the Agent and the other Credit Parties, in form and substance reasonably satisfactory to the Agent.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

"Federal Funds Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Fee Letter" means that certain letter agreement dated as of the date hereof by and among Bank of America and the Borrowers.

"Final Order" means, collectively, the order of the 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 Court, which order shall be satisfactory in form and substance to the Agent and the Required Lenders, 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 the Agent and the Required Lenders waive such requirement), together with all extensions, modifications, and amendments thereto, in form and substance satisfactory to the Agent and the Required Lenders, 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 Agent's and the Lenders' claims.

"FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time.

"Fiscal Quarter" means any fiscal quarter of any Fiscal Year, which quarters shall generally end on the last day of each March, June, September and December of such Fiscal Year in accordance with the fiscal accounting calendar of the Loan Parties.

"Fiscal Year" means any period of twelve consecutive months ending on December 31 of any calendar year.

"Floor" means 0.00% per annum.

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

"Foreign Lender" means (a) if a Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if a Borrower is not a U.S. Person, a Lender that is resident or organized under the Laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

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

"Fronting Exposure" means, at any time there is a Defaulting Lender that is a Revolving Loan Lender, with respect to the L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Loan Lenders or Cash Collateralized in accordance with the terms 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 set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

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

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term "Guarantee" shall not include endorsement of checks, drafts and other items for the payment of money for collection or deposit, in either case, in the

ordinary course of business. 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. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" means (a) the Parent and each Subsidiary of the Parent (other than (i) any Borrower, (ii) any Excluded Domestic Subsidiary and (iii) any CFC) existing on the Closing Date, and (b) each other Subsidiary of the Parent that shall be required to execute and deliver a Facility Guaranty pursuant to Section 6.11.

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

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

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

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

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

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

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than 60 days after the date on which such trade account payable was created);

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

(f) all Attributable Indebtedness of such Person;

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

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

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

to such Person and except to the extent such Person's liability for such Indebtedness is otherwise limited under applicable Law. 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.

"Indemnified Taxes" means (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.

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

"Information" has the meaning specified in Section 10.07.

"Intellectual Property" has the meaning given to such term in the Security Agreement.

"Interest Payment Date" means, as to any Base Rate Loan, the first calendar day of each calendar month and the Maturity Date.

"Interim Order" means, collectively, the order of the Court entered in the Chapter 11 Cases after an interim hearing (assuming satisfaction of the standard prescribed in Section 324 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 Agent and the Required Lenders, 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.

"Internal Control Event" means a material weakness in, or fraud that involves management or other employees who have a significant role in, the Parent's and/or its Subsidiaries' internal controls over financial reporting.

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

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

"Inventory Reserves" means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as may be established from time to time by the Agent in its Permitted Discretion with respect to the determination of the salability, at retail, of the Eligible Inventory, which reflect such other factors as affect the market value of the Eligible Inventory or which reflect claims and liabilities that the Agent reasonably determines will need to be satisfied in connection with the realization upon the Inventory. Without limiting the generality of the foregoing, Inventory Reserves may, in the Agent's Permitted Discretion, include (but are not limited to) reserves based on:

(a) obsolescence;

(b) seasonality;

(c) Shrink;

(d) imbalance;

(e) change in Inventory character;

(f) change in Inventory composition;

(g) change in Inventory mix;

(h) mark-downs (both permanent and point of sale);

(i) retail mark-ons and mark-ups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events; and

(j) out-of-date and/or expired Inventory.

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

"IRS" means the United States Internal Revenue Service.

"ISDA Definitions" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

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

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

"Laws" means, collectively, all international, foreign, Federal, state and local 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, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"L/C Advance" means, with respect to each Revolving Loan Lender, such Revolving Loan Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Committed Revolving Loan Borrowing.

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

"L/C Issuer" means Bank of America. The L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the L/C Issuer, in which case the term "L/C Issuer" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if, on any date of determination, a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Lead Borrower" has the meaning specified in the introductory paragraph hereto.

"Lease" means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any real property 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 Court.

"Lease Reserve" means a reserve, in an amount established by the Agent in its Permitted Discretion, in respect of, (i) 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 Court or (ii) Inventory held at leased or rental retail locations with respect to which there has been filed a motion to compel the assumption or rejection of the applicable lease, in each case in an amount determined by the Agent in its sole discretion; provided, in no event shall the Agent establish any such Lease Reserves in respect of any Store which is subject to the Required Store Closing Sales.

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

"Lender" means a Revolving Loan Lender.

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

"Letter of Credit" means each Standby Letter of Credit and each Commercial Letter of Credit issued hereunder.

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

"Letter of Credit Expiration Date" means the Maturity Date.

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

"Letter of Credit Sublimit" means an amount equal to $12,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Loan Commitments. A permanent reduction of the Aggregate Revolving Loan Commitments shall not require a corresponding pro rata reduction in the Letter of Credit Sublimit; provided, however, that if the Aggregate Revolving Loan Commitments are reduced to an amount less than the Letter of Credit Sublimit, then the Letter of Credit Sublimit shall be reduced to an amount equal to (or, at Lead Borrower's option, less than) the Aggregate Revolving Loan Commitments.

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

"Liquidity" means, at any date of determination, without duplication, the sum of (i) unrestricted cash and cash equivalents of the Loan Parties plus (ii) Excess Availability as of such date; provided, for purposes of calculating Excess Availability in connection with the calculation of Liquidity as of any date of determination, amounts attributable to clause (i) of the definition of Carve-Out Availability Reserve shall be disregarded in the determination of the Revolving Borrowing Base.

"Loan" means a Revolving Loan and other advances to or for the account of the Borrowers pursuant to this Agreement.

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

"Loan Documents" means this Agreement, each Note, each Issuer Document, the Fee Letter, all Borrowing Base Certificates, the Security Documents, the Facility Guaranty, each Approved Budget Variance Report and any other instrument or agreement now or hereafter executed and delivered in connection herewith, each as amended and in effect from time to time.

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

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

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), or condition (financial or otherwise) of Parent and its Subsidiaries, taken as a whole; (b) a material impairment of the rights and remedies of the Agent or any Lender under any Loan Documents, or of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party; provided, "Material Adverse Effect" shall exclude the effect of the filing of the Chapter 11 Cases, the events and conditions resulting from or leading up thereto and any action required to be taken under the Loan Documents or the Orders in connection therewith. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then-existing events would result in a Material Adverse Effect.

"Material Contract" means each contract or agreement to which any Loan Party is a party involving aggregate consideration payable to or by such Loan Party of $10,000,000 or more in any Fiscal Year (other than purchase orders in the ordinary course of business of the Loan Parties).

"Material Indebtedness" means Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding $1,000,000. For purposes of determining the amount of Material Indebtedness at any time, (a) the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof, (b) undrawn committed or available amounts shall be included, and (c) all amounts owing to all creditors under any combined or syndicated credit arrangement shall be included.

"Maturity Date" means the earliest of (a) October 18, 2024, (b) the date of termination of all of the Commitments pursuant to Section 2.06, (c) the date on which the Obligations become due and payable pursuant to this Agreement, whether by acceleration or otherwise, (d) the effective date of a plan of reorganization for the Debtors, (e) the date of a sale of all or substantially all of the Debtors' assets (including, without limitation, under Section 363 and/or 365 of the Bankruptcy Code), (f) 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, (g) the date the Final Order is vacated, terminated, rescinded, revoked, declared null and void or otherwise ceases to be in full force and effect, (h) the date of a conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code or any Loan Party shall file a motion or other pleading seeking the conversion of the Chapter 11 Cases to Chapter 7 of the Bankruptcy Code, unless otherwise consented to in writing by the Agent and the Required Lenders, and (i) the date of dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing by the Agent and the Required Lenders.

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

"MDL Vouchers" means certain vouchers issued by the Parent in connection with the "Formaldehyde-Abrasion MDL" disclosed in the Parent's Annual Report on Form 10-K for the Fiscal Year ended December 31, 2023, filed with the SEC on March 1, 2024.

"Measurement Period" means, at any date of determination, the most recently completed four Fiscal Quarters of the Parent.

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

"Mortgage Policy" has the meaning specified in the definition of Eligible Real Estate.

"Mortgages" means each and every fee mortgage or deed of trust, security agreement and assignment by the Loan Party owning or holding the leasehold interest in the Real Estate encumbered thereby in favor of the Agent.

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

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including the Lead Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

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

"Non-Defaulting Lender" means, at any time, each Revolving Loan Lender that is not a Defaulting Lender at such time.

"Note" means a promissory note made by the Borrowers in favor of a Revolving Loan Lender evidencing Committed Revolving Loans made by such Revolving Loan Lender, substantially in the form of Exhibit B-1 attached hereto.

"NPL" means the National Priorities List under CERCLA.

"Obligations" means (a) all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit (including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral therefor), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and (b) any Other Liabilities; provided that Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Order" means the Interim Order or the Final Order, as the context may require and "Orders" means, collectively, the Interim Order and the Final Order.

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

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient 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 Liabilities" means any obligation on account of (a) any Cash Management Services furnished to any of the Loan Parties or any of their Subsidiaries and/or (b) any Bank Product furnished to any of the Loan Parties and/or any of their Subsidiaries.

"Other Taxes" means 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 3.06).

"Outstanding Amount" means (i) with respect to Committed Revolving Loans and Prepetition Revolving Credit Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of Loans or Prepetition Revolving Credit Loans occurring on such date; and (ii) with respect to any L/C Obligations or Prepetition L/C Obligations on any date, the amount of such L/C Obligations or Prepetition L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations or Prepetition L/C Obligations as of such date, including as a result of any reimbursements by the Borrowers of Unreimbursed Amounts.

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

"Parent" means LL Flooring Holdings, Inc., a Delaware corporation.

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

"PBGC" means the Pension Benefit Guaranty Corporation.

"PCAOB" means the Public Company Accounting Oversight Board.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Lead Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

"Permitted Discretion" means a determination made by the Agent in good faith and in the exercise of commercially reasonable business judgment from the perspective of an asset based lender.

"Permitted Disposition" means any of the following:

(a) Dispositions of Inventory in the ordinary course of business;

(b) bulk sales or other Dispositions of the Inventory and other assets of a Loan Party in connection with Required Store Closing Sales consummated in accordance with the Orders or the Store Closing Order, as applicable;

(c) consummation of the Private Sale Transaction in accordance with the Orders;

(d) Dispositions of Sale Assets in accordance with the Orders;

(e) [reserved];

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

(g) [reserved];

(h) [reserved];

(i) Dispositions consisting of the compromise, settlement or collection of delinquent accounts receivable in the ordinary course of business, consistent with past practices;

(j) leases, subleases, space leases, licenses or sublicenses of Real Estate (and terminations of any of the foregoing), in each case in the ordinary course of business and which do not materially interfere with the business of the Parent and its Subsidiaries, taken as a whole;

(k) to the extent constituting a Disposition, (i) the use of cash or cash equivalents in accordance with the Approved Budget solely to the extent such use would not result in a Default or Event of Default and (ii) conversions of cash equivalents into cash or other cash equivalents;

(l) any Disposition of Real Estate to a Governmental Authority as a result of the condemnation of such Real Estate;

(m) Dispositions of property (but excluding, for the avoidance of doubt, Eligible Real Estate) to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property that is promptly purchased or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property; and

(n) to the extent constituting a Disposition, (i) transactions permitted by Section 7.04, (ii) Restricted Payments permitted by Section 7.06 and (iii) Liens permitted by Section 7.01.

"Permitted Encumbrances" means:

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

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Laws, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 6.04;

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

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

(e) Liens in respect of judgments that would not constitute an Event of Default hereunder;

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

each case, do not materially interfere with the ordinary conduct of business of the Loan Parties, taken as an whole;

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

(h) [reserved];

(i) Liens constituting Prepetition ABL Liens;

(j) Liens granted by the Orders and created pursuant to the Loan Documents to secure the Obligations and the Liens securing Permitted Prior Liens;

(k) landlords' and lessors' statutory Liens in respect of rent not in default for more than any applicable grace period, not to exceed thirty (30) days;

(l) possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the Closing Date; provided that such liens (a) attach only to such Investments or other Investments held by such broker or dealer and (b) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

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

(n) Liens arising from precautionary UCC filings regarding "true" operating leases or, to the extent permitted under the Loan Documents, the consignment of goods to a Loan Party;

(o) [reserved];

(p) Liens in favor of customs and revenues authorities imposed by applicable Laws arising in the ordinary course of business in connection with the importation of goods and securing obligations;

(q) [reserved];

(r) any interest or title of a licensor, sublicensor, lessor or sublessor under licenses, leases, sublicenses or subleases entered into by the Loan Parties in the ordinary course of business; provided that such interest or title is limited to the property that is the subject of such transaction;

(s) Liens constituting contractual rights of set off relating to purchase orders and other similar agreements entered into by the Loan Parties in the ordinary course of business;

(t) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with the respect thereto incurred in the ordinary course of business;

(u) the Carve-Out;

(v) the (i) Adequate Protection Liens and (ii) Adequate Protection Superpriority Claims.

"Permitted Indebtedness" means each of the following:

(a) Indebtedness outstanding on the Closing Date listed on Schedule 7.03, including the Prepetition Obligations;

(b) Indebtedness (i) of any Loan Party to any other Loan Party (ii) of any Subsidiary that is not a Loan Party to any other Subsidiary that is not a Loan Party; and (iii) of any Subsidiary that is not a Loan Party to any Loan Party in an aggregate principal amount not to exceed, together with any Investment made pursuant to clause (g)(iv) of the definition of Permitted Investments, $1,500,000 outstanding at any time; provided that, for purposes of clause (b)(iii) and notwithstanding clause (d) of the definition of "Indebtedness", trade accounts payable in the ordinary course of business shall not constitute "Indebtedness" unless past due for more than 120 days after the date on which such trade account payable was created;

(c) [reserved];

(d) [reserved];

(e) contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business in connection with the construction or improvement of Stores;

(f) obligations (contingent or otherwise) of any Loan Party or any Subsidiary thereof existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates, and not for purposes of speculation or taking a "market view" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(g) [reserved];

(h) [reserved];

(i) the Obligations;

(j) Indebtedness not otherwise specifically described herein in an aggregate principal amount not to exceed $1,000,000 at any time outstanding;

(k) [reserved];

(l) Indebtedness constituting indemnification obligations or obligations in respect of purchase price or other similar adjustments in connection with Permitted Dispositions;

(m) Indebtedness consisting of the financing of insurance premiums incurred in the ordinary course of business of any Loan Party or any Subsidiary;

(n) Guarantees (i) of any Indebtedness of any Loan Party or any Subsidiary thereof described in clause (a) hereof and (ii) by any Loan Party of any Indebtedness of another Loan Party permitted hereunder;

(o) [reserved];

(p) obligations in respect of netting services, automatic clearinghouse arrangements, overdraft protections and similar arrangements;

(q) Indebtedness in an amount not to exceed $1,000,000 incurred by any Loan Party or any Subsidiary in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business consistent with past practice in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; provided that any such Indebtedness of a Loan Party shall be unsecured; and

(r) all premiums (if any), interest (including Post-Petition interest), fees, expenses, charges and additional or contingent interest, to the extent applicable, on obligations described in clauses (a) through (q) above.

"Permitted Investments" means each of the following:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 360 days from the date of acquisition thereof;

(c) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (b) of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 360 days from the date of acquisition thereof;

(d) Fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into;

(e) Investments, classified in accordance with GAAP as current assets of the Loan Parties, in any money market fund, mutual fund, or other investment companies that are registered under the Investment Company Act of 1940, as amended, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (d) above;

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

(g) (i) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding on the Closing Date and (ii) additional Investments by any Loan Party and its Subsidiaries in Loan Parties (other than the Parent), (iii) additional Investments by Subsidiaries of the Loan Parties that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iv) so long as no Event of Default is continuing, additional Investments by the Loan Parties in wholly-owned Subsidiaries that are not Loan Parties in an aggregate amount invested after the Closing Date not to exceed, together with any Indebtedness incurred pursuant to clause (b)(iii) of the definition of Permitted Indebtedness, $1,500,000;

(h) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(i) Guarantees constituting Permitted Indebtedness;

(j) so long as no Default or Event of Default has occurred and is continuing or would result from such Investment, Investments by any Loan Party in Swap Contracts permitted hereunder;

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

(l) Guarantees of leases or other obligations of any Loan Party or any Subsidiary that do not constitute Indebtedness, in each case entered into in the ordinary course of business; and

(m) promissory notes and other non-cash consideration that is received in connection with any Permitted Disposition.

"Permitted Overadvance" means an Overadvance (other than any Temporary Overadvance) made by the Agent, in its discretion, which:

(a) is made to maintain, protect or preserve the Collateral and/or the Credit Parties' rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties; or

(b) is made to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation;

(c) is made to pay any other amount chargeable to any Loan Party hereunder; and

(d) together with all other Permitted Overadvances then outstanding, shall not (i) exceed five percent (5%) of the Revolving Borrowing Base at any time or (ii) unless a liquidation of the Collateral is occurring, remain outstanding for more than forty-five (45) consecutive days, unless in each case, the Required Lenders otherwise agree;

provided however, that the foregoing shall not (i) modify or abrogate any of the provisions of Section 2.03 regarding the Revolving Loan Lenders' obligations with respect to Letters of Credit, or (ii) result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances, and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder, and further provided that in no event shall the Agent make an Overadvance, if after giving effect thereto, the principal amount of the Credit Extensions would exceed the

Aggregate Revolving Loan Commitments (as in effect prior to any termination of the Revolving Loan Commitments pursuant to Sections 2.06 or 8.02 hereof).

"Permitted Prior Liens" has the meaning given to such term in the Interim Order (or the Final Order, when applicable).

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

"Petition Date" has the meaning given to such term in the Recitals to this Agreement.

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Lead Borrower or any ERISA Affiliate or any such Plan to which the Lead Borrower or any ERISA Affiliate is required to contribute on behalf of its employees.

"Post-Petition" means the time period commencing immediately upon the filing of the applicable Chapter 11 Case.

"Prepetition" means the time period ending immediately prior to the filing of the Chapter 11 Cases.

"Prepetition ABL Agent" means Bank of America, in its capacities as administrative agent and collateral agent under the Prepetition Loan Documents.

"Prepetition ABL Liens" has the meaning given to such term in the Orders.

"Prepetition Bank Product Obligations" means Prepetition Obligations in respect of "Bank Products" under and as defined in the Prepetition Credit Agreement.

"Prepetition Cash Management Obligations" means Prepetition Obligations in respect of "Cash Management Services" under and as defined in the Prepetition Credit Agreement.

"Prepetition Credit Agreement" has the meaning given to such term in the Recitals to this Agreement.

"Prepetition Hedging Obligations" means the Prepetition Obligations in respect of "Swap Obligations" under each "Swap Contract" under, and as such terms are defined in, the Prepetition Credit Agreement.

"Prepetition L/C Obligations" means the Prepetition Obligations in respect of principal of "L/C Obligations" under, and as defined in, the Prepetition Credit Agreement and interest, expenses, fees and other sums payable in respect thereof under the Prepetition Loan Documents.

"Prepetition Lenders" has the meaning given to such term in the Recitals to this Agreement.

"Prepetition Loan Documents" means the "Loan Documents" as defined in the Prepetition Credit Agreement.

"Prepetition Obligations" means all "Obligations" as defined in the Prepetition Credit Agreement.

"Prepetition Revolving Credit Loans" means Prepetition Obligations in respect of principal of "Revolving Loans" under, and as defined in, the Prepetition Credit Agreement.

"Prior Week" as of any date of determination, the immediately preceding week ended on a Saturday and commencing on the prior Sunday.

"Private Sale Transaction" has the meaning set forth in the definition of Temporary Overadvance Conditions.

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning set forth in Section 10.29.

"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 Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

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

"Real Estate Advance" means an amount not to exceed $35,000,000, or such other amount as the Required Lenders may from time to time determine to be appropriate in their discretion.

"Realty Reserves" means such reserves as the Agent from time to time determines in the Agent's Permitted Discretion as being appropriate to reflect the impediments to the Agent's ability to realize upon any Eligible Real Estate, to reflect such factors as affect the market value of the Eligible Real Estate or to reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon any Eligible Real Estate. Without limiting the generality of the foregoing, Realty Reserves may include (but are not limited to) any of the following with respect to Eligible Real Estate: (i) Environmental Compliance Reserves, (ii) reserves for (A) municipal taxes and assessments, (B) repairs and (C) remediation of title defects, and (iii) reserves for Indebtedness secured by Liens on any Eligible Real Estate having priority over the Lien of the Agent.

"Recipient" means the Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

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

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

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

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"Remedies Notice Period" shall have the meaning specified in the Interim Order (or Final Order, when applicable).

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

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

"Request for Credit Extension" means (a) with respect to a Committed Revolving Loan Borrowing, a Committed Loan Notice and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

"Required Lenders" means, as of any date of determination, Lenders which are not Affiliates holding more than 50% of the Aggregate Revolving Loan Commitments or, if the Aggregate Revolving Loan Commitments and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated, Lenders holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations being deemed "held" by such Lender for purposes of this definition); provided that at any time when there are less than three (3) non-affiliated Lenders, the term shall mean all such Lenders; provided further that the Revolving Loan Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Required Store Closing Sales" has the meaning given to such term in the Orders.

"Rescindable Amount" has the meaning provided in Section 2.12(b)(i).

"Reserves" means all Inventory Reserves, Availability Reserves and Realty Reserves. The Agent shall have the right, at any time and from time to time after the Closing Date in its Permitted Discretion to establish, modify or eliminate any Reserves upon one (1) Business Day prior notice to the Lead Borrower (during which period the Agent shall be available to discuss any such proposed Reserve with the Borrowers); provided that (i) no such prior notice shall be required (1) for changes to any such Reserve resulting solely from changes in the mathematical calculations of the amount of such Reserve in accordance with the methodology for such calculation previously used by the Agent, (2) if a Material Adverse Effect is reasonably likely to arise by any delay in establishing or changing such Reserve, or (3) if an Event of Default is continuing and (ii) upon such notice, the Lead Borrower will not be permitted to borrow so as to exceed the Revolving Borrowing Base after giving effect to such new or modified Reserves.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means (a) the chief executive officer, chief restructuring officer, president, chief financial officer or general corporate counsel of a Loan Party or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder (including the controller, treasurer or assistant treasurer of a Loan Party), (b) solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, (c) solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Agent. 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. To the extent requested by the Agent, each Responsible Officer will provide an incumbency certificate and to the extent requested by the Agent, appropriate authorization documentation, in form and substance satisfactory to the Agent.

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

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

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

plus

(b) the Cost of Eligible Inventory (other than Eligible Unpaid In-Transit Inventory), net of Inventory Reserves, multiplied by 90% multiplied by the Appraised Value of Eligible Inventory;

plus

(c) the Real Estate Advance;

plus

(d) the Cost of Eligible Unpaid In-Transit Inventory, net of Inventory Reserves, multiplied by 75% multiplied by the Appraised Value of Eligible Unpaid In-Transit Inventory;

minus

(e) the then amount of all Availability Reserves;

provided, that, in no event shall the aggregate amounts available to be borrowed under clause (d) above exceed fifteen (15%) of the Revolving Loan Cap.

"Revolving Loan" means an extension of credit by a Revolving Loan Lender to the Borrowers under Article II in the form of a Committed Revolving Loan.

"Revolving Loan Cap" means, at any time of determination, the lesser of (a) the Aggregate Revolving Loan Commitments and (b) the Revolving Borrowing Base.

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

"Revolving Loan Facility" means, at any time, the Aggregate Revolving Loan Commitments of all Revolving Loan Lenders at such time.

"Revolving Loan Lender" means, at any time, any Lender that has a Revolving Loan Commitment at such time or, if the Revolving Loan Commitments have terminated, Revolving Credit Extensions.

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

"Sale Assets" has the meaning given to such term in the Orders.

"Sanction(s)" means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty's Treasury ("HMT") or any Governmental Authority having jurisdiction over any Lender or any Loan Party or any of their respective Subsidiaries or Affiliates.

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

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

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

"Security Agreement" means the Security Agreement dated as of the date hereof among the Loan Parties and the Agent.

"Security Documents" means the Security Agreement, the Mortgages, the Orders, the Cash Management Order, and each other security agreement or other instrument or document executed and delivered to the Agent pursuant to this Agreement or any other Loan Document granting a Lien to secure any of the Obligations.

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

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

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

"SOFR" means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

"Specified Loan Party" means any Loan Party that is not then an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to Section 10.26).

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

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

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

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

"Store Closing Order" means the order of the 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 Agent and the Required Lenders, which among other matters authorizes and approves procedures for Store closing sales.

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

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

"Successor Case" means, with respect to the Chapter 11 Cases, any subsequent proceedings under Chapter 7 of the Bankruptcy Code.

"Supported QFC" has the meaning set forth in Section 10.29.

"Swap Contract" means (a) any Swap Contract under the Prepetition Credit Agreement which constituted a "Swap Contract" under the Prepetition Credit Agreement, (b) 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 (c) 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 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).

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

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

"Temporary Overadvance" means an Overadvance other than a Permitted Overadvance made, or deemed to have been made, during the Temporary Overadvance Period in accordance with Section 2.01(b).

"Temporary Overadvance Conditions" means the following:

(a) no Default or Event of Default shall have occurred and be continuing, or would result from the making (or deemed making) of any Temporary Overadvance;

(b) on or prior to September 9, 2024, the Loan Parties shall have entered into a binding purchase and sale agreement, or other similar binding agreement, with respect to the sale by the Loan Parties of the Owned Real Estate identified on Schedule 5.08(b)(1), which such agreement shall be in form and substance reasonably satisfactory to the Agent and the Required Lenders (the "Private Sale Transaction");

(c) on or prior to September 12, 2024, the Loan Parties shall have filed a motion (in form and substance reasonably satisfactory to the Agent and the Required Lenders) seeking approval of the Private Sale Transaction;

(d) on or prior to September 16, 2024, the Loan Parties shall have obtained an order of the Court approving the Private Sale Transaction, such order to be in form and substance reasonably satisfactory to the Agent and the Required Lenders;

(e) on or prior to September 30, 2024, the Loan Parties shall consummate the Private Sale Transaction and shall receive net cash proceeds therefrom sufficient to repay in full in cash the Prepetition Obligations and the Obligations (including Cash Collateralization of all L/C Obligations (to the extent not previously Cash Collateralized as required herein)).

"Temporary Overadvance Maximum Amount" means $10,000,000.

"Temporary Overadvance Period" means the period commencing on September 1, 2024 through and including September 30, 2024.

"Term SOFR" means, for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day; *provided* that if the Term SOFR would otherwise be less than the Floor, the Term SOFR shall be deemed the Floor for purposes of this Agreement.

"Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Agent from time to time).

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

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

"UCC" or "Uniform Commercial Code" shall have the meaning given to such term in the Security Agreement.

"UCP 600" means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce ("ICC") Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

"UFCA" has the meaning specified in Section 10.22(c).

"UFTA" has the meaning specified in Section 10.22(c).

"UK Financial Institution" means any BRRD Undertaking (as defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

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

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

"Unreimbursed Amount" has the meaning specified in Section 2.03(c)(i).

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regimes" has the meaning set forth in Section 10.29.

"U.S. Tax Compliance Certificate" has the meaning specified in Section 3.01(e)(i)(B)(3).

"U.S. Trustee" means the United States Trustee applicable to the Chapter 11 Cases.

"Write-Down and Conversion Powers" means (a) 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; or (b) with respect to the United Kingdom, any powers

of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

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

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Loan Document or any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto," "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 rules, regulations, orders and 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, extended, restated, replaced or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. Any and all references to "Borrower" regardless whether preceded by the term a, any, each of, all, and/or any other similar term shall be deemed to refer, as the context requires, to each and every (and/or any one or all) parties constituting a Borrower, individually and/or in the aggregate.

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

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

(d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in Dollars in full in cash or immediately available funds (or, in the case of contingent reimbursement obligations with respect to Letters of Credit and Bank Products (other than Swap Contracts), providing Cash Collateralization) of all of the Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Swap Contracts) other than (i) unasserted contingent indemnification Obligations, (ii) any Obligations relating to Bank Products (including Swap Contracts) that, at such time, are allowed by the applicable Bank Product provider to

remain outstanding without being required to be repaid or Cash Collateralized, and (iii) any Obligations relating to Cash Management Services that, at such time, are allowed by the applicable provider of such Cash Management Services to remain outstanding without being required to be repaid.

1.03 Accounting Terms

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Lead Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Lead Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Lead Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Lead Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties thereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

1.04 [Reserved].

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

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

1.07 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

1.08 UCC Terms. Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term "UCC" refers, as of any date of determination, to the UCC then in effect.

1.09 Interest Rates. The Agent does not warrant, nor accept responsibility, nor shall the Agent have any liability with respect to the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (or any component of any of the foregoing) or the effect of any of the foregoing. The Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrowers. The Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

ARTICLE II
THE REVOLVING LOAN COMMITMENTS AND CREDIT EXTENSIONS

2.01 Committed Revolving Loans.

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

(i) after giving effect to any Committed Revolving Loan Borrowing, the sum of (x) Total Outstandings plus (y) the Outstanding Amount of Prepetition Obligations shall not exceed the Revolving Loan Cap,

(ii) after giving effect to any Committed Revolving Loan Borrowing, the aggregate Outstanding Amount of the Committed Revolving Loans of any Revolving Loan Lender, plus such Revolving Loan Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Revolving Loan Lender's Applicable Percentage, in its capacity as a Prepetition Lender, of the Outstanding Amount of all Prepetition Obligations shall not exceed such Lender's Revolving Loan Commitment, and

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

Within the limits of each Revolving Loan Lender's Revolving Loan Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01(a), prepay under Section 2.05, and reborrow under this Section 2.01(a).

(b) At any time and from time to time during the Temporary Overadvance Period, subject to the satisfaction of the Temporary Overadvance Conditions required to be satisfied at such time, each Revolving Loan Lender agrees to make (or be deemed to have made) Temporary Overadvances in an aggregate amount at any time outstanding not to exceed, for all such Temporary Overadvances, the Temporary Overadvance Maximum Amount. For purposes of determining the aggregate amount of any Temporary Overadvance at any time, amounts attributable to clause (i) of the definition of Carve-Out Availability Reserve shall be disregarded in the determination of the Revolving Borrowing Base.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document:

(i) On the Closing Date, (x) each Existing Letter of Credit shall constitute a "Letter of Credit" for all purposes under the Loan Documents and shall be deemed issued under this Agreement on the Closing Date and all Prepetition L/C Obligations shall constitute "L/C Obligations" for all purposes of under the Loan Documents, (y) all Prepetition Cash Management Obligations, Prepetition Bank Product Obligations and Prepetition Hedging Obligations shall constitute Obligations under the Loan Documents and (z) all other Prepetition Revolving Obligations, other than the Prepetition Revolving Credit Loans, shall constitute Obligations under the Loan Documents.

(ii) Upon the entry of the Final Order, the total outstanding amount of the Prepetition Revolving Obligations shall constitute Obligations hereunder, in the case of this clause (ii), with the outstanding amount of all Prepetition Revolving Credit Loans, if any, as of the date of the entry of the Final Order being refinanced as Revolving Loans hereunder immediately upon the entry of the Final Order and all unpaid interest and fees thereon accrued through the entry of the Final Order to be paid on the next scheduled date for payment of interest and fees under this Agreement.

For the avoidance of doubt, the only Prepetition Revolving Obligations which shall be subject to the Creeping Roll-Up (as defined in the Orders) shall be the Prepetition Revolving Credit Loans.

2.02 Borrowings of Committed Revolving Loans.

(a) Committed Revolving Loans shall be Base Rate Loans.

(b) Each Committed Revolving Loan Borrowing shall be made upon the Lead Borrower's irrevocable notice to the Agent, which may be given by telephone or a Committed Loan Notice; provided that any telephone notice must be confirmed promptly by delivery to the Agent of a Committed Loan Notice. Each such notice must be received by the Agent not later than 11:00 a.m. on the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Lead Borrower pursuant to this Section 2.02(b) must be confirmed promptly by delivery to the Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Except as provided in Section 2.03(c), each Borrowing of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) the requested date of the Borrowing (which shall be a Business Day) and (ii) the principal amount of Committed Revolving Loans to be borrowed.

(c) Following receipt of a Committed Loan Notice, the Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Revolving Loans. In the case of a Committed Revolving Loan Borrowing, each Lender shall make the amount of its Committed Revolving Loan available to the Agent in immediately available funds at the Agent's Office not later than

1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Agent shall make all funds so received available to the Borrowers in like funds as received by the Agent either by (i) crediting the account of the Lead Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Lead Borrower; provided, however, that if, on the date the Committed Loan Notice with respect to such Borrowing is given by the Lead Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrowers as provided above.

(d) If at any time any Borrower, after receipt of an invoice therefor, fails to pay any interest, fee, service charge, amount owing under Section 10.04 or other payment to which any Lender or Agent is entitled from the Loan Parties pursuant hereto when due, the Agent, without the request of the Lead Borrower, may advance any interest, fee, service charge (including direct wire fees), amount owing under Section 10.04, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby. The Agent shall advise the Lead Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrowers' obligations under Section 2.05(c). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02(d) shall bear interest at the interest rate then and thereafter applicable to Base Rate Loans.

(e) [reserved]

(f) At any time that Base Rate Loans are outstanding, the Agent shall notify the Lead Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(g) [reserved]

(h) The Agent, the Lenders and the L/C Issuer shall have no obligation to make any Loan or to provide any Letter of Credit if an Overadvance (other than a Temporary Overadvance as provided in Section 2.01(b)) would result. The Agent may, in its discretion, make Permitted Overadvances without the consent of the Borrowers, the Lenders and the L/C Issuer and the Borrowers and each Lender and L/C Issuer shall be bound thereby. A Permitted Overadvance is for the account of the Borrowers and shall constitute a Base Rate Loan and an Obligation and shall be repaid by the Borrowers in accordance with the provisions of Section 2.05(c) (other than a Temporary Overadvance as provided in Section 2.01(b)). The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding. The making by the Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of Section 2.03 regarding the Revolving Loan Lenders' obligations to purchase participations with respect to Letter of Credits. The Agent shall have no liability for, and no Loan Party or Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Agent with respect to Unintentional Overadvances regardless of the amount of any such Overadvance(s).

(i) Each determination of an interest rate by the Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrowers and the Lenders in the absence of manifest error.

(j) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by this Agreement, pursuant to a cashless settlement mechanism approved by the Lead Borrower, the Agent, and such Lender.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Loan Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Loan Parties or their respective Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Loan Lenders severally agree to participate in Letters of Credit issued for the account of the Loan Parties or their respective Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, subject to Section 2.01(b), (x) the sum of (i) Total Outstandings plus (ii) the Outstanding Amount of Prepetition Obligations shall not exceed the Revolving Loan Cap, (y) the aggregate Outstanding Amount of the Committed Revolving Loans of any Revolving Loan Lender, plus such Revolving Loan Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Revolving Loan Lender's Applicable Percentage, in its capacity as a Prepetition Lender, of the Outstanding Amount of all Prepetition Obligations shall not exceed such Lender's Revolving Loan Commitment, and (z) the sum of (i) the Outstanding Amount of the L/C Obligations plus (ii) the Outstanding Amount of the Prepetition L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Lead Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrowers that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. It is hereby acknowledged and agreed that each of the letters of credit described in Schedule 2.03(a) (the "Existing Letters 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 pursuant to Section 2.01(c)(i).

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Standby Letter of Credit would occur more than 365 days after the date of issuance or last extension, unless the L/C Issuer and the Agent have approved such expiry date; or

(B) the expiry date of such requested Commercial Letter of Credit would occur more than 180 days after the date of issuance, unless the L/C Issuer and the Agent have approved such expiry date; or

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

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

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

(F) except as otherwise agreed by the Agent, such Letter of Credit is to be denominated in a currency other than Dollars; provided that if the L/C Issuer, with the consent of the Agent, issues a Letter of Credit denominated in a currency other than Dollars, all reimbursements by the Borrowers of the honoring of any drawing under such Letter of Credit shall be paid in the currency in which such Letter of Credit was denominated; or

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

(H) any Revolving Loan Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrowers or such Revolving Loan Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either (x) the Letter of Credit then proposed to be issued or (y) that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

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

(iv) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

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

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

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

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

(iii) [reserved]

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

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Lead Borrower and the Agent thereof. Not later than 11:00 a.m. on the first Business Day after the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an "Honor Date"), the Borrowers shall reimburse the L/C Issuer through the Agent in an amount equal to the amount of such drawing. If the Borrowers fail to so reimburse the L/C Issuer by such time, the Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Lender's Applicable Percentage thereof. In such event, the Borrowers shall be deemed to have requested a Committed Revolving Loan Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Loan Cap and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Loan Lender shall upon any notice from the Agent pursuant to Section 2.03(c)(i) make funds available to the Agent (and the Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Agent's Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Agent, whereupon, subject to the provisions of Section 2.03(c)(v), each Revolving Loan Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrowers in such amount. The Agent shall remit the funds so received to the L/C Issuer.

(iii) Until each Revolving Loan Lender funds its Committed Revolving Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Revolving Loan Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(iv) Each Revolving Loan Lender's obligation to make Committed Revolving Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Loan Lender may have against the L/C Issuer, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Loan Lender's obligation to make Committed Revolving Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Lead Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(v) With respect to any Unreimbursed Amount that is not fully refinanced by a Committed Revolving Loan Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrowers shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and without further notice, motion or application to, hearing before, or order from the Court, shall bear interest at the Default Rate for Base Rate Loans. In such event, each Revolving Loan Lender's payment to the Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Revolving Loan Lender in satisfaction of its participation obligation under this Section 2.03.

(vi) If any Revolving Loan Lender fails to make available to the Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Revolving Loan Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Revolving Loan Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Loan Lender's Committed Revolving Loan included in the relevant Committed Revolving Loan Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Loan Lender (through the Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Loan Lender its L/C Advance in respect of such payment in accordance with Section 2.03(c), if the L/C Issuer, or the Agent for the account of the L/C Issuer, receives any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Agent pursuant to Section 2.03(g)), the L/C Issuer shall distribute any payment it receives to the Agent and the Agent will distribute to such Revolving Loan Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Loan Lender's L/C Advance was outstanding) in the same funds as those received by the Agent.

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

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

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

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

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

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrowers or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrowers;

(v) any honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP 600, as applicable;

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

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

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

The Lead Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of non-compliance with the Lead Borrower's instructions or other irregularity, the Lead Borrower will promptly notify the L/C Issuer. The Borrowers shall be

conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Revolving Loan Lender and the Borrowers agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Loan Party or to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; (iii) any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit or any error in interpretation of technical terms; (iv) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document, or (v) for any action, neglect or omission under or in connection with any Letter of Credit or Issuer Documents, including, without limitation, the issuance or amendment of any Letter of Credit, the failure to issue or amend any Letter of Credit, or the honoring or dishonoring of any demand under any Letter of Credit, and such action or neglect or omission will be binding upon the Loan Parties and the Lenders; provided that the Borrowers may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to punitive, consequential or exemplary, damages suffered by the Borrowers which the Borrowers establish pursuant to a final and non-appealable judgment of a court of competent jurisdiction were caused by the L/C Issuer's willful misconduct or gross negligence or L/C Issuers willful failure to pay under any Letter of Credit after the presentation to it by the beneficiaries of a sight draft and certificate(s) complying with the terms and conditions of a Letter of Credit. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Cash Collateral. If, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrowers shall, in each case, promptly Cash Collateralize the then Outstanding Amount of all L/C Obligations in an amount equal to 103% of the Outstanding Amount of all L/C Obligations, pursuant to documentation in form and substance satisfactory to the Agent and the L/C Issuer. Sections 2.05, 2.06(c) and 8.02(c) set forth certain additional requirements to deliver Cash Collateral hereunder. The Borrowers hereby grant to the Agent a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing to secure all Obligations. Such cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. If at any time the Agent determines that any funds held as cash collateral are subject to any right or claim of any Person other than the Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrowers will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited as cash collateral, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as cash collateral that the Agent

determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as cash collateral, such funds shall be applied to reimburse the L/C Issuer and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations. Notwithstanding anything to the contrary in this Agreement, the remaining balance of the Cash Collateral will be returned to the Borrowers when all Letters of Credit have been terminated or discharged, all Revolving Loan Commitments have been terminated and all Obligations (other than contingent Obligations that by their terms survive the termination of this Agreement) have been paid in full in immediately available funds.

(h) Applicability of ISP and UCP 600; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer 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 UCP 600 shall apply to each Commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrowers for, and the L/C Issuer's rights and remedies against the Borrowers shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP 600, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) Letter of Credit Fees. The Borrowers shall pay to the Agent for the account of each Revolving Loan Lender in accordance with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the daily Stated Amount under each such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit). For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of the Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the Interest Payment Date for Base Rate Loans, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand, and (ii) computed on a monthly basis in arrears. Notwithstanding anything to the contrary contained herein, Letter of Credit Fees shall accrue at the Default Rate to the extent provided for in Section 2.08(b) hereof.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrowers shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at a rate not to exceed 0.125% per annum, computed on the daily amount available to be drawn under such Letter of Credit and on a monthly basis in arrears. Such fronting fees shall be due and payable on the Interest Payment Date for Base Rate Loans, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of the Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrowers shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

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

2.04 [Reserved].

2.05 Prepayments.

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Agent, at any time or from time to time voluntarily prepay Committed Revolving Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Agent not later than 11:00 a.m. on the date of prepayment of Base Rate Loans and (ii) any prepayment of Base Rate Loans shall be in a principal amount of $100,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Each such prepayment shall be applied in accordance with Section 8.03.

(b) [reserved].

(c) If for any reason the sum of (i) Total Outstandings plus (ii) the Outstanding Amount of all Prepetition Obligations at any time exceeds the Revolving Loan Cap as then in effect, the Borrowers shall immediately prepay the Prepetition Revolving Credit Loans and the Prepetition L/C Obligations (in the order and manner provided in the Prepetition Credit Agreement) and then prepay the Loans and L/C Borrowings outstanding hereunder and, if requested by Agent in its sole discretion, Cash Collateralize the L/C Obligations (other than L/C Borrowings) in an aggregate amount equal to such excess; provided, that at any time there is a Temporary Overadvance outstanding any such prepayment shall be applied first to such Temporary Overadvance and then otherwise in accordance with this clause (c).

(d) The Borrowers shall prepay the Obligations and Prepetition Obligations, in accordance with Section 8.03 and the Approved Budget, with 100% of the net cash proceeds received by Borrowers or any other Loan Party in connection with the Private Sale Transaction immediately upon receipt of such proceeds.

(e) The Borrowers shall prepay the Obligations and Prepetition Obligations, in accordance with Section 8.03 and the Approved Budget, with 100% of the net cash proceeds received by Borrowers or any other Loan Party in connection with the Disposition of any Sale Assets immediately upon receipt of such proceeds.

(f) Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party) to reimburse the L/C Issuer or the Lenders, as applicable, and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations and Prepetition Obligations in accordance with Section 8.03 and the Approved Budget.

2.06 Termination or Reduction of Revolving Loan Commitments.

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Agent, at any time or from time to time and without premium or penalty, terminate the Revolving Loan Commitments or permanently reduce the Aggregate Revolving Loan Commitments; provided that (i) any such notice shall be received by the Agent not later than 11:00 a.m. three (3) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $10,000,000 or any whole multiple of $1,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce the Aggregate Revolving Loan Commitments if, after giving effect thereto and to any concurrent

prepayments hereunder, the sum of (x) Total Outstandings plus (y) the Outstanding Amount of all Prepetition Obligations would exceed the Aggregate Revolving Loan Commitments.

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

(c) The Agent will promptly notify the Revolving Loan Lenders of any termination or reduction of the Letter of Credit Sublimit or the Aggregate Revolving Loan Commitments under this Section 2.06. Upon any reduction of the Aggregate Revolving Loan Commitments, the Revolving Loan Commitment of each Revolving Loan Lender shall be reduced by such Revolving Loan Lender's Applicable Percentage of such reduction amount. If, as a result of such termination or reduction, (i) the Outstanding Amount of L/C Obligations which are not fully Cash Collateralized hereunder, would exceed the Letter of Credit Sublimit, the Borrowers shall contemporaneously with such reduction or termination, Cash Collateralize such excess amount, and (ii) the sum of (x) Committed Revolving Loans hereunder and (y) the Outstanding Amount of Prepetition Revolving Credit Loans would exceed the Aggregate Revolving Loan Commitments, the Borrowers shall contemporaneously with such reduction or termination, pay the Agent an amount equal to such excess.

2.07 Repayment of Obligations. Except as provided in Section 10.11 with respect to the collateralization of the Other Liabilities, the Borrowers shall repay to the Lenders, on the Maturity Date, all Obligations outstanding on such date (other than contingent indemnification claims for which a claim has not been asserted) and shall cause each Letter of Credit to be returned to the L/C Issuer undrawn or shall Cash Collateralize all L/C Obligations (to the extent not previously Cash Collateralized as required herein). For the avoidance of doubt, after giving effect to the foregoing repayment and Cash Collateralization, the Revolving Loan Commitments of each Lender to make Revolving Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall be terminated.

2.08 Interest.

(a) Subject to the provisions of Section 2.08(b) below, each Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin.

(b) If any Event of Default exists, without further notice, motion or application to, hearing before, or order from the Court, all outstanding Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Law.

(i) [reserved].

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

(c) Except as provided in Section 2.08(b)(ii), interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

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

(a) Commitment Fee. The Borrowers shall pay to the Agent for the account of each Revolving Loan Lender in accordance with its Applicable Percentage, a commitment fee (the "Commitment Fee") equal to the Commitment Fee Percentage *multiplied by* the actual daily amount by which the Aggregate Revolving Loan Commitments exceed the Total Outstandings during the immediately preceding month. The Commitment Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable monthly in arrears on the Interest Payment Date for Base Rate Loans, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period.

(b) Other Fees. The Borrowers shall pay the fees in the amounts, to the parties and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans when the Base Rate is determined by Bank of America's "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt.

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

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

2.12 Payments Generally; Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Agent will, subject to Section 2.14 hereof, promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent after 2:00 p.m. shall, at the option of the Agent, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Lender prior to (A) 12:00 noon on the date of such Borrowing, or (B) the date that such Lender's participation in a Letter of Credit is required to be funded, that such Lender will not make available to the Agent such Lender's share of such Borrowing or participation, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) or Section 2.03, as applicable, and may, in reliance upon such assumption, make available to the Borrowers, or the L/C Issuer, as applicable, a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Revolving Loan Borrowing or participation available to the Agent, then the applicable Lender and the Borrowers severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Committed Revolving Loan Borrowing or participation to the Agent, then the amount so paid shall constitute such Lender's Committed Revolving Loan included in such Committed Revolving Loan Borrowing or participation in such Letter of Credit. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Agent.

(i) Payments by Borrowers; Presumptions by Agent. Unless the Agent shall have received notice from the Lead Borrower prior to the date on which any payment is due to the Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrowers will not make such payment, the Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due.

With respect to any payment that the Agent makes for the account of the Lenders or the L/C Issuer hereunder as to which the Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made such payment; (2) the Agent has made a payment in excess of the amount

so paid by the Borrowers (whether or not then owed); or (3) the Agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Agent forthwith on demand the Rescindable Amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

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

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

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Revolving Loans, to fund participations in Letters of Credit and to make payments hereunder are several and not joint. The failure of any Lender to make any Committed Revolving Loan, to fund any such participation or to make any payment hereunder on any date required hereunder shall not relieve any other 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 Committed Revolving Loan, to purchase its participation or to make its payment hereunder.

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

2.13 Sharing of Payments by Lenders.

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

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

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Revolving Loans or subparticipations in L/C Obligations to

any Eligible Assignee or Participant, other than to the Borrowers or any Subsidiary thereof (as to which the provisions of this Section shall apply).

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

2.14 Settlement Amongst Lenders.

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

(b) The Agent shall deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, each Lender shall transfer to the Agent (as provided below) or the Agent shall transfer to each Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Committed Revolving Loans made by each Lender shall be equal to such Lender's Applicable Percentage of all Committed Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Agent by the 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 Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent. If and to the extent any Lender shall not have so made its transfer to the Agent, such Lender agrees to pay to the Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing.

2.15 [Reserved].

2.16 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Revolving Loan Lender becomes a Defaulting Lender, then, until such time as that Revolving Loan Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer hereunder; third, to Cash Collateralize the L/C Issuer's

Fronting Exposure with respect to such Defaulting Lender; fourth, as the Lead Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; fifth, if so determined by the Agent and the Lead Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Revolving Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; sixth, to the payment of any amounts owing to the Revolving Loan Lenders or the L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Revolving Loan Lender or the L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise may be required under the Loan Documents in connection with any Lien conferred thereunder or directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Revolving Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Revolving Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Revolving Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Revolving Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Revolving Loans and funded and unfunded participations in L/C Obligations are held by the Lenders pro rata in accordance with the Aggregate Revolving Loan Commitments hereunder without giving effect to Section 2.16(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Revolving Loan Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Revolving Loan Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Revolving Loan Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.03(g).

(C) With respect to any fee payable under Section 2.09(a) or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's

Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Revolving Loan Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrowers shall have otherwise notified the Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Outstanding Amount of Obligations of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Loan Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to them hereunder or under applicable Law, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.03(g).

(b) Defaulting Lender Cure. If the Lead Borrower, the Agent and the L/C Issuer agree in writing that a Revolving Loan Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Revolving Loan Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Loans of the other Revolving Loan Lenders or take such other actions as the Agent may determine to be necessary to cause the Committed Revolving Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Revolving Loan Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), whereupon such Revolving Loan Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Revolving Loan Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Revolving Loan Lender's having been a Defaulting Lender.

2.17 Super Priority Nature of Obligations and Agent's Liens; Payment of Obligations.

(a) The priority of the 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, the Agent and Lenders shall be entitled to immediate payment of such Obligations without further application to or order of the Court.

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

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Agent) require the deduction or withholding of any Tax from any such payment by the Agent or a Loan Party, then the Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Agent shall be required by the Internal Revenue Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Agent shall withhold or make such deductions as are determined by the Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Internal Revenue Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Loan Parties shall, and each Loan Party does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes

imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and 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. A certificate as to the amount of such payment or liability delivered to the Lead Borrower by a Lender or the L/C Issuer (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (w) the Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (x) the Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(c) relating to the maintenance of a Participant Register, (y) the Agent and the Loan Parties, as applicable, against any Taxes as a result of the failure by such Lender or such L/C Issuer, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or such L/C Issuer, as the case may be, to the Borrowers or the Agent pursuant to subsection (e), and (z) the Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Agent and the Loan Parties to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Agent and the Loan Parties under this clause (ii).

(d) Evidence of Payments. Upon request by the Lead Borrower or the Agent, as the case may be, after any payment of Taxes by the Lead Borrower or by the Agent to a Governmental Authority as provided in this Section 3.01, the Lead Borrower shall deliver to the Agent or the Agent shall deliver to the Lead Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Lead Borrower or the Agent, as the case may be.

(e) Status of Lenders; Tax Documentation. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Lead Borrower and the Agent, at the time or times proscribed by applicable Law or when reasonably requested by the Lead Borrower or the Agent, such properly completed and executed documentation proscribed by applicable Law or such other information reasonably requested by the Lead Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Lead Borrower or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Lead Borrower or the Agent as will enable the Lead Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 3.01(e)(i)(A), 3.01(e)(i)(B) and 3.01(e)(i)(D) below) shall not be required if in the Lender's reasonable judgment such completion,

execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Without limiting the generality of the foregoing, in the event that a Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrowers and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Agent), properly completed and executed IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate, 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 U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Agent (in such number of copies as shall be requested

by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Agent), executed copies (or originals, as required) of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrowers or the Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Lead Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Lead Borrower or the Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Lead Borrower or the Agent as may be necessary for the Lead Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(ii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall promptly update such form or certification or promptly notify the Borrowers and the Agent in writing of its legal inability to do so.

(iii) For purposes of determining withholding Taxes imposed under FATCA, from and after the effective date of this Agreement, the Loan Parties and the Agent shall treat (and the Lenders hereby authorize the Agent and the Loan Parties to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient 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 subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Revolving Loan Commitments and the repayment, satisfaction or discharge of all other Obligations.

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 Loans whose interest is determined by reference to SOFR, or to determine or charge interest rates based upon SOFR or Term SOFR, then, on notice thereof by such Lender to the Lead Borrower through the Agent, if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Term SOFR component of the Base Rate, in each case, until such Lender notifies the Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, if such notice asserts the illegality of such Lender determining or charging interest rates based upon Term SOFR, the Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Term SOFR.

3.03 [Reserved].

3.04 Increased Costs.

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

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

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Other Connection Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer any other condition, cost or expense affecting this Agreement or Loans whose interest is determined by reference to SOFR made by such Lender or any Letter of Credit or participation therein;

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

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

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital or liquidity of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Revolving Loan Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time upon delivery of the certificate contemplated by Section 3.04(c) the Loan Parties will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered. Notwithstanding the foregoing, no Lender shall claim any amounts pursuant to Section 3.04(a) unless such Lender is generally seeking similar compensation from other borrowers under other similar credit agreements.

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

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Loan Parties shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 [Reserved]

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or requires the Borrowers to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Lead Borrower, such Lender or the L/C Issuer, as applicable, shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the

case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any Indemnified Taxes or any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.06(a), the Borrowers may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive termination of the Revolving Loan Commitments, repayment of all other Obligations hereunder, and resignation of the Agent.

3.08 Designation of Lead Borrower as Borrowers' Agent.

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

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Each Borrower shall have joint and several liability in respect of all Obligations, without regard to any defense (other than the defense of payment), setoff or counterclaim which may at any time be available to or be asserted by any other Loan Party against the Credit Parties, or by any other circumstance whatsoever (with or without notice to or knowledge of the Borrowers) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrowers' liability hereunder, in bankruptcy or in any other instance, and such Obligations of the Borrowers shall not be conditioned or contingent upon the pursuit by the Lenders or any other Person at any time of any right or remedy against any Borrower or against any other Person which may be or become liable in respect of all or any part of the Obligations or against any Collateral or Facility Guaranty therefor or right of offset with respect thereto. Each Borrower hereby acknowledge that this Agreement is the independent and several obligation of each Borrower (regardless of which Borrower shall have delivered a Request for Credit Extension) and may be enforced against each Borrower separately, whether or not enforcement of any right or remedy hereunder has been sought against any other Borrower. Each Borrower hereby expressly waives, with respect to any of the Credit Extensions made to any other Borrower hereunder and any of the amounts owing hereunder by such other Loan Parties in respect of such Credit Extensions, diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Agent, the L/C Issuer or any Lender exhaust any right, power or remedy or proceed against such other Loan Parties 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 such amounts owing hereunder.

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

ARTICLE IV
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions to Effectiveness. In addition to the conditions set forth in Section 4.02, this Agreement, including the agreement of each Lender to make its initial Credit Extension on the Closing Date, is subject to satisfaction of the following conditions precedent:

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

(i) counterparts of this Agreement each properly executed by a Responsible Officer of the signing Loan Party and the Lenders sufficient in number for distribution to the Agent, each Lender and the Lead Borrower;

(ii) [reserved];

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

(iv) copies of each Loan Party's Organization Documents;

(v) a certificate of a Responsible Officer of the Lead Borrower certifying (A) that the conditions specified in Sections 4.01 and 4.02 have been satisfied and (B) that there has been no event or circumstance since the Petition Date that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

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

(vii) the items set forth in clauses (d) through (k) of the definition of Eligible Real Estate, as applicable.

(b) The Agent shall be satisfied with the amount, types and terms and conditions of all insurance maintained by the Loan Parties.

(c) The Lead Borrower shall have delivered to the Agent a Borrowing Base Certificate dated as of August 7, 2024, relating to the week ended on August 3, 2024, and executed by a Responsible Officer of the Lead Borrower, showing Excess Availability not less than $12,000,000.

(d) Since the Petition Date, there shall have not occurred any event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(e) Except for actions, suits, proceedings, investigations, claims or disputes stayed by Section 362 of the Bankruptcy Code, there shall be no actions, suits, proceedings, investigations, claims or disputes pending or, to the knowledge of the Loan Parties, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of their Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document or (b) could reasonably be expected to result in a Material Adverse Effect.

(f) Since the Petition Date, other than those customarily resulting from the commencement of the Chapter 11 Cases, and changes contemplated in the Approved Budget delivered to the Agent, there shall have 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.

(g) Other than those resulting from the commencement of the Chapter 11 Cases, since the Petition Date there shall have been no adverse change in the ability of the Agent and the Lenders to enforce the Loan Documents, the Prepetition Loan Documents, the Obligations and the Prepetition Obligations of the Loan Parties hereunder.

(h) Subject to the Orders, the Agent shall be satisfied that the Interim Order and the other Security Documents shall be effective to create in favor of the Agent a legal, valid and enforceable first priority security interest in and Lien upon the Collateral and shall have received Lien searches and other evidence reasonably satisfactory to the Agent that such Liens are the only Liens upon the Collateral, except Permitted Encumbrances.

(i) (i) The Court shall have entered the Interim Order and such order shall be in form and substance satisfactory to the Agent and the Required Lenders in their sole discretion, be in full force and effect, and shall not have been reversed, modified, stayed or vacated absent prior written consent of the Agent and the Required Lenders; (ii) the 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 Agent and the Required Lenders, not later than a reasonable time in advance of the Petition Date for Agent's counsel to review and analyze the same; (iii) all motions, orders (including the "first day" orders) and other documents to be filed with or submitted to the Court on the Petition Date shall be in form and substance reasonably satisfactory to the Agent and the Required Lenders; and (iv) all "first day" orders shall have been approved and entered by the Court. No trustee, examiner or receiver shall have been appointed or designated with respect to the Loan Parties' business, properties or assets and the Court shall not have entered any order granting any party, other than the Loan Parties, control over any Collateral.

(j) The Agent and the Required Lenders shall have received the Approved Budget.

(k) At least ten (10) Business Days prior to the Closing Date, the Agent and the Lenders shall have received all documentation and other information required by regulatory authorities under applicable "know your customer", beneficial ownership regulations, and anti-money laundering rules and regulations, including without limitation the Act, and including satisfactory regulatory compliance review by the Agent and the Lenders in respect of the Flood Disaster Protection Act.

(l) Any Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have provided, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Borrower.

(m) All fees and expenses (including, without limitation, all fees, charges and disbursements of counsel to the Agent) required to be paid hereunder or pursuant to the Fee Letter, in the case of expenses, to the extent invoiced at least one (1) Business Day prior to the Closing Date (except as otherwise agreed by the Borrowers), shall, substantially concurrently with the occurrence of the Closing Date, have been paid (which amounts, with the exception of fees, charges and disbursements of counsel to the Agents, may, at the Borrower's option, be offset against the proceeds of the Loans borrowed on the Closing Date).

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

(a) The representations and warranties of each Loan Party contained in Article V or in any other Loan Document, shall be true and correct in all material respects on and as of the date of such Credit Extension, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality, they shall be true and correct after giving effect to such qualification and (iii) for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a), (b) and (c), respectively, of Section 6.01.

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

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

(d) After giving effect to the Credit Extension requested to be made on any such date and the use of proceeds thereof, unless a Permitted Overadvance or Temporary Overadvance is in effect hereunder, Excess Availability shall be greater than zero.

(e) (i) the Interim Order shall have been entered or 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 consent of the Agent and the Required Lenders 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 a Debtor or any of their Subsidiaries; and (iv) no appeal of the Interim Order or the Final Order, as applicable, shall have been timely filed.

Each Request for Credit Extension submitted by the Lead Borrower shall be deemed to be a representation and warranty by the Borrowers that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension. The conditions set forth in this Section 4.02 are for the sole benefit of the Credit Parties but until the Required Lenders (or, in the event that there are only two (2) Lenders hereunder, any Lender so long as such Lender is a Lender as of the Closing Date and maintains a Revolving Loan Commitment not less than the Revolving Loan Commitment of such Lender as of the Closing Date) otherwise direct the Agent to cease making Loans and issuing Letters of Credit, the Lenders will fund their Applicable Percentage of all Loans and L/C Advances and participate in all Letters of Credit whenever made or issued, which are requested by the Lead Borrower and which, notwithstanding the failure of the Loan Parties to comply with the provisions of this Article IV, agreed to by the Agent; provided, however, the making of any such Loans or the issuance of any Letters of Credit shall not be

deemed a modification or waiver by any Credit Party of the provisions of this Article IV on any future occasion or a waiver of any rights or the Credit Parties as a result of any such failure to comply.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

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

5.01 Existence, Qualification and Power. Each Loan Party (a) is a corporation, limited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Closing Date, each Loan Party's name as it appears in official filings in its state of incorporation or organization, its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, and its federal employer identification number.

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

5.03 Governmental Authorization; Other Consents. Subject to the entry of the Interim Order or Final Order, as applicable, no material 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 the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (a) the perfection or maintenance of the Liens created under the Security Documents (including the first priority nature thereof) or (b) such as have been obtained or made and are in full force and effect.

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

5.05 Financial Statements; No Material Adverse Effect.

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

(b) Since the Petition Date, other than those 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 expected to have a Material Adverse Effect.

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

(d) The forecasted financial statements of the Parent and its Subsidiaries delivered pursuant to Section 6.01(d) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed by the Loan Parties' management to be fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Loan Parties' reasonable estimate of its future financial performance (it being understood that no assurance is given that such projections will be met or realized and that actual results may vary from such forecasted financial information).

5.06 Litigation. Except for the Chapter 11 Cases, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Responsible Officers of the Loan Parties threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

5.07 No Default. Other than any Default or Event of Default arising as a result of the commencement of the Chapter 11 Cases, and except any Default or Event of Default that would not reasonably be expected to have a Material Adverse Effect, no Loan Party or any Subsidiary is in default under or with respect to, any Material Contract or any Material Indebtedness. No Default or Event of Default has occurred and is continuing or would result on the Closing Date from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens.

(a) Each of the Loan Parties has good record and marketable title in fee simple to or valid leasehold interests in, all Real Estate necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a

Material Adverse Effect. Each of the Loan Parties has good and marketable title to, valid leasehold interests in, or valid licenses or other rights to use all personal property and assets material to the ordinary conduct of its business except where failure to have such title, interest, license or other right could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Loan Parties are subject to no Liens, other than Liens permitted by Section 7.01.

(b) Schedule 5.08(b)(1) sets forth the address (including street address, county and state) of all Real Estate (excluding Leases) that is owned by the Loan Parties as of the Closing Date, together with a list of the holders of any mortgage or other Lien thereon as of the Closing Date. Each Loan Party has good, marketable and insurable fee simple title to the Real Estate owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Encumbrances and except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Schedule 5.08(b)(2) sets forth the address (including street address, county and state) of all Leases of the Loan Parties as of the Closing Date. Each of such Leases is in full force and effect and the Loan Parties are not in default in any material respect of the terms thereof subject to any applicable cure periods, other than defaults arising solely as a result of the commencement of the Chapter 11 Cases and others disclosed to the Agent on or prior to the Petition Date, *provided* that the representation set forth in this sentence shall not apply to any Lease for a store location that is a subject of a Permitted Store Closing Sale after the effective date for the rejection of the applicable Lease in the Chapter 11 Cases..

5.09 Environmental Compliance.

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

(b) Except, in each case, as would not reasonably be expected to have a Material Adverse Effect, none of the properties currently owned by any Loan Party or, to the knowledge of any Loan Party, leased by any Loan Party, is listed or, to the knowledge of any Loan Party, proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list; to the knowledge of any Loan Party, there are no and never have been any underground or above-ground 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 except in compliance with applicable Environmental Laws on any property currently owned by any Loan Party in violation of applicable Environmental Laws or, to the knowledge of any Loan Party, there is no asbestos or asbestos-containing material on any property currently owned by any Loan Party in violation of applicable Environmental Laws; and Hazardous Materials have not been released, discharged or disposed of by any Loan Party on any property currently owned by any Loan Party in violation of applicable Environmental Laws.

(c) Except, in each case, as would not reasonably be expected to have a Material Adverse Effect, no Loan Party is undertaking, and no Loan Party 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; and 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 have been disposed of by any Loan Party in a manner not reasonably expected to result in material liability to any Loan Party.

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

5.11 Taxes. Subject to the terms of the Orders and any required approval of the Bankruptcy Court, the Loan Parties have filed all material Federal, state and other tax returns and reports required to be filed, and have paid all material Federal, state and other taxes, assessments, fees and other material governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP and subject to the terms of the Orders, and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation or the payment of which is stayed by the Chapter 11 Cases and (b) other with respect to Federal taxes, to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect. There is no proposed tax assessment against any Loan Party that would, if made, have a Material Adverse Effect. No Loan Party or any Subsidiary thereof is a party to any tax sharing agreement, other than any tax sharing agreement between or among the Loan Parties

5.12 ERISA Compliance.

(a) Except as would not be reasonably expected to have a Material Adverse Effect, (i) each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state laws and (ii) each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or is subject to a favorable opinion letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the knowledge of any Responsible Officer of the Lead Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status that has resulted or could reasonably be expected to result in a Material Adverse Effect.

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

(c) Except as would not be reasonably expected to have a Material Adverse Effect, (i) no ERISA Event has occurred, and neither the Lead Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan; (ii) the Lead Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 80% or higher and neither the Lead Borrower

nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 80% as of the most recent valuation date; (iv) neither the Lead Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid, (v) neither the Lead Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

5.13 Subsidiaries; Equity Interests. As of the Closing Date, the Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, which Schedule sets forth, in each case as of the Closing Date, the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of each such Subsidiary. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except for Permitted Encumbrances. Except as set forth in Schedule 5.13, there are no outstanding rights to purchase any Equity Interests in any Subsidiary. As of the Closing Date, the Loan Parties have no equity investments in any other corporation or entity other than (i) Investments described in clause (e) of the definition of "Permitted Investments" and (ii) those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Loan Parties (other than the Parent) have been validly issued, and are fully paid and non-assessable and, as of the Closing Date, are owned in the amounts specified on Part (c) of Schedule 5.13 free and clear of all Liens except for Permitted Encumbrances. The copies of the Organization Documents of each Loan Party and each amendment thereto provided pursuant to Section 4.01 are true and correct copies of each such document, each of which is valid and in full force and effect.

5.14 Margin Regulations; Investment Company Act.

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

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

5.15 Disclosure. Each Loan Party has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other factual written information (excluding projections, forward looking information and information of a general economic or general industry nature) furnished by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished, and taken as a whole) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading;

provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed by the Loan Parties' management to be reasonable at the time (it being understood that no assurance is given that such projections will be met or realized and that actual results may vary from such projected financial information).

5.16 Compliance with Laws. Each of the Loan Parties is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Intellectual Property; Licenses, Etc.. The Loan Parties own, or possess the right to use, all of the Intellectual Property, licenses, permits and other authorizations that are reasonably necessary for the operation of their respective businesses as currently conducted, without violation of the rights of any other Person, except to the extent that any such violation would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Lead Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed by any Loan Party infringes upon any rights held by any other Person except in each case, as would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Lead Borrower, threatened in writing, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 Labor Matters. There are no strikes, lockouts, slowdowns or other labor disputes against any Loan Party pending or, to the knowledge of any Loan Party, threatened that, in any case, could reasonably be expected to have a Material Adverse Effect. The hours worked by and payments made to employees of the Loan Parties comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect. No Loan Party has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state Law that, in any case, could reasonably be expected to have a Material Adverse Effect. All payments due from any Loan Party, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 5.18, as of the Closing Date, no Loan Party is a party to or bound by any collective bargaining agreement. There are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party has made a pending demand for recognition that, in any case, could reasonably be expected to have a Material Adverse Effect. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party that, in any case, could reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party is bound.

5.19 Security Documents.

(a) The Interim Order and Final Order, as applicable, create in favor of the Agent, for the benefit of the Credit Parties, a legal, valid, continuing and enforceable security interest in the Collateral. The Security Documents further evidence the legal and valid Liens on all the Collateral in favor of the Agent, for its benefit and the benefit of the other Credit Parties, , the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. Upon the entry of the Interim Order, or Final Order, as applicable, the Agent will have a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in such Collateral with the priority set forth in the applicable Order and subject to the terms hereof in all respects.

(b) Pursuant to the Orders, the Agent shall have a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Loan Parties in trademarks, patents and related assets constituting Intellectual Property Collateral (as defined in the Security Agreement), and the proceeds thereof, other than Copyrights (as defined in the Security Agreement), in each case subject to entry of, and with the priority set forth in, the applicable Order.

(c) Pursuant to the Orders, the Mortgages filed prior to the Petition Date to secure the Prepetition Obligations create in favor of the Agent, for the benefit of the Credit Parties referred to therein, a legal, valid, continuing and enforceable Lien in the Mortgaged Property (as defined in the Mortgages), and the proceeds thereof, the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. Upon the entry of the Orders, as applicable, the Agent will have a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all Mortgaged Property (including without limitation the proceeds of such Mortgaged Property), in each case with the priority set forth in the applicable Order.

5.20 [Reserved].

5.21 Deposit Accounts; Credit Card Arrangements.

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

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

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

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

5.24 Material Contracts. Schedule 5.24 sets forth all Material Contracts to which any Loan Party is a party as of the Closing Date (other than the Loan Documents). The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Agent on or before the Closing Date. The Loan Parties are not in breach or in default in any material respect of or under any Material Contract and have not received any notice of default under, or of the intention of any other party thereto to terminate, any Material Contract, except where the failure to comply, or such default or termination, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

5.25 Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.26 EEA Financial Institution. None of the Borrowers is an Affected Financial Institution.

5.27 Beneficial Ownership Certification. The information included in the Beneficial Ownership Certification most recently provided to each Lender, if applicable, is true and correct in all respects.

5.28 Sanctions Concerns and Anti-Corruption Laws.

(a) Sanctions Concerns. No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties and their Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) Anti-Corruption Laws. The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.29 Approved Budget. The Borrowers have heretofore furnished to the Agent and the Required Lenders the Approved Budget and such Approved Budget was prepared in good faith 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 (taking into account the variances permitted under Section 6.21(b)).

5.30 Chapter 11 Cases; Orders.

(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 Orders, and (ii) the hearing for the entry of the Interim 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 Loan Parties 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 the Carve-Out and 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 without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements or documents subject, as to priority, only to the Carve-Out and Permitted Prior Liens as set forth in the Interim Order and 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), modified or amended without the consent of the Agent and Required Lenders.

(e) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the Interim Order or the Final Order, as the case may be, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, the Agent 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 Court.

ARTICLE VI
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Revolving Loan Commitment hereunder, any Loan, any Prepetition Obligations or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification claims for which a claim has not been asserted), or any Letter of Credit shall remain outstanding, the Loan Parties shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary to:

6.01 Financial Statements. Deliver to the Agent, in form and detail reasonably satisfactory to the Agent:

(a) as soon as available, but in any event within 90 days after the end of each Fiscal Year of the Parent, a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Year, and the related consolidated statements of income or operations, Shareholders' 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 unqualified opinion of a Registered Public Accounting Firm of nationally recognized standing or otherwise reasonably acceptable to the Agent; provided, however, that such statements shall be deemed received by the Agent upon their filing with the SEC;

(b) as soon as available, but in any event within 45 days after the end of each Fiscal Quarter of each Fiscal Year of the Parent, a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Quarter, and the related consolidated statements of income or operations,

Shareholders' Equity and cash flows for such Fiscal Quarter and for the portion of the Parent's Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) the corresponding Fiscal Quarter of the previous Fiscal Year and (B) the corresponding portion of the previous Fiscal Year, all in reasonable detail, certified by a Responsible Officer of the Lead Borrower as fairly presenting in all material respects the financial condition, results of operations, Shareholders' Equity and cash flows of the Parent and its Subsidiaries as of the end of such Fiscal Quarter in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; provided, however, that such statements shall be deemed received by the Agent upon their filing with the SEC;

(c) as soon as available, but in any event within 30 days after the end of each month of each Fiscal Year of the Parent, a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such month, and the related consolidated statements of income or operations, Shareholders' Equity and cash flows for such month and for the portion of the Parent's Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) the corresponding month of the previous Fiscal Year and (B) the corresponding portion of the previous Fiscal Year, all in reasonable detail, certified by a Responsible Officer of the Lead Borrower as fairly presenting in all material respects the financial condition, results of operations, Shareholders' Equity and cash flows of the Parent and its Subsidiaries as of the end of such month in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; provided, however, that such statements shall be deemed received by the Agent upon their filing with the SEC; and

(d) as soon as available, but in any event no more than 90 days after the end of each Fiscal Year of the Parent, forecasts prepared by management of the Lead Borrower, in form reasonably satisfactory to the Agent, of Excess Availability and of the consolidated balance sheets and statements of income or operations and cash flows of the Parent and its Subsidiaries on a monthly basis for the immediately following Fiscal Year (including the Fiscal Year in which the Maturity Date occurs), and promptly after they become available, any significant revisions to such forecast with respect to such Fiscal Year.

6.02 Certificates; Other Information. Deliver to the Agent, in form and detail reasonably satisfactory to the Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a), (b) and (c), a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Lead Borrower shall also provide a statement of reconciliation conforming such financial statements to GAAP;

(b) no later than 7:00 p.m. on Wednesday of each week (or, if such day is not a Business Day, on the next succeeding Business Day), a Borrowing Base Certificate showing the Revolving Borrowing Base as of the close of business as of the immediately preceding Saturday; provided that (x) the portion of the Revolving Borrowing Base attributable to Eligible Credit Card Receivables shall be updated on a monthly basis, (y) the portion of the Revolving Borrowing Base attributable to Eligible In-Transit Inventory shall be reported for second preceding Saturday, and (z) the amount of Availability Reserves attributable to customer deposits shall be updated on a monthly basis, each Borrowing Base Certificate to be certified as complete and correct in all material respects by a Responsible Officer of the Lead Borrower and together with such Borrowing Base Certificate, (i) credit card sales reports and accounts payable agings (including summary of both Prepetition and Post-Petition accounts payable), and (ii) a summary of inventory by location and type with a supporting perpetual inventory report, in form and substance satisfactory to the Agent, and (iv) such other reports as requested by the Agent and the Lenders;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report which any Loan Party files with the SEC, and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or with any national securities exchange;

(d) The financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule;

(e) promptly after the Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness;

(f) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from any Governmental Authority (including, without limitation, the SEC (or comparable agency in any applicable non-U.S. jurisdiction)) concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any Subsidiary thereof or any other matter which, if adversely determined, could reasonably expected to have a Material Adverse Effect;

(g) promptly following any request therefor, information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Act and the Beneficial Ownership Regulation; and

(h) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lead Borrower posts such documents, or provides a link thereto on the Lead Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Lead Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that: (i) the Lead Borrower shall deliver paper copies of such documents to the Agent or any Lender that requests the Lead Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Agent or such Lender and (ii) the Lead Borrower shall notify the Agent (by telecopier or electronic mail) of the posting of any such documents filed on SEC forms 10-K, 10-Q or 8-K. The Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

6.03 Notices. Promptly after any Responsible Officer obtains knowledge thereof notify (or furnish to, as applicable) the Agent:

(a) of the occurrence of any Default or Event of Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) of any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(d) of the occurrence of any ERISA Event that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(e) of any material change in accounting policies or financial reporting practices by the Parent and its Subsidiaries;

(f) of any change in the Parent's or the Lead Borrower's senior executive officers;

(g) of the discharge by any Loan Party of its present Registered Public Accounting Firm or any withdrawal or resignation by such Registered Public Accounting Firm;

(h) of any collective bargaining agreement or other labor contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;

(i) of the filing of any Lien for unpaid Taxes against any Loan Party in excess of $1,000,000;

(j) of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed; and

(k) (1) as soon as practicable (but in no event less than one (1) day) in advance of filing with the 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, the Final Order, all other material proposed orders and pleadings related to the Chapter 11 Cases, the Prepetition Credit Agreement, this Agreement and the credit facilities contemplated thereby and any plan of reorganization and/or any disclosure statement related thereto and (2) substantially simultaneously with the filing with the 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, or pleadings concerning the financial condition of the Loan Parties or their Subsidiaries or the Chapter 11 Cases that may be filed with the Court or delivered to the Committee appointed in any Chapter 11 Case, if any, or to the U.S. Trustee.

Each notice pursuant to this Section (other than pursuant to clause (k)) shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth details of the occurrence referred to therein and stating what action the Lead Borrower has taken and proposes to take with respect thereto.

6.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, and in accordance with the Approved Budget, all its obligations and liabilities, including (a) all Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, (b) all lawful claims (including, without limitation, claims of landlords, warehousemen, customs brokers, freight forwarders, consolidators, and carriers) which, if unpaid, would by Law become a Lien upon its property, and (c) all Material Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, except, in each case, where (x) (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (iii) such contest effectively suspends collection of the contested obligation and enforcement of any Lien

securing such obligation, and (iv) no Lien has been filed with respect thereto or (y) the failure to make such payment could not reasonably be expected to result in a Material Adverse Effect, in each case, other than those that have been excused or prohibited from being paid pursuant to an order of the Court, or pursuant to the Bankruptcy Code in connection with the Chapter 11 Cases. Nothing contained herein shall be deemed to limit the rights of the Agent with respect to determining Reserves pursuant to this Agreement.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its Intellectual Property, except (i) to the extent such Intellectual Property is no longer used or useful in the conduct of the business of the Loan Parties, or (ii) pursuant to a transaction permitted by Section 7.04 or 7.05.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and casualty or condemnation events excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except, in the case of clauses (a) or (b), where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies reasonably acceptable to the Agent and not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Agent.

(b) Maintain for themselves and their Subsidiaries, a Directors and Officers insurance policy, and a "Blanket Crime" policy including employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property, and computer fraud coverage with responsible companies in such amounts as are customarily carried by business entities engaged in similar businesses similarly situated, and will upon request by the Agent furnish the Agent certificates evidencing renewal of each such policy.

(c) Cause fire and extended coverage policies maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgage clause (regarding improvements to Real Estate) and lenders' loss payable clause (regarding personal property), in form and substance reasonably satisfactory to the Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(d) Cause commercial general liability policies to be endorsed to name the Agent as an additional insured.

(e) Cause business interruption policies to name the Agent as a loss payee and to be endorsed or amended to include (i) a provision that, from and after the Closing Date, the insurer shall pay

all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, the Agent, the Agent or any other party shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(f) Cause each such policy referred to in this Section 6.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent.

(g) Deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent, including an insurance binder) together with evidence reasonably satisfactory to the Agent of payment of the premium therefor.

(h) If at any time (i) any building or other improvement included in Eligible Real Estate is located in a designated "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 total amount as is reasonable and customary for similarly situated companies, and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended from time to time, or (ii) any Eligible Real Estate is located in a "Zone 1" area as shown on the U.S.G.S. National Seismic Hazard Maps, obtain earthquake insurance in such total amount as is reasonable and customary for similarly situated companies.

(i) Permit any representatives that are designated by the Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby.

None of the Credit Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Credit Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Credit Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Credit Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Credit Party under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Credit Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP; (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect or is otherwise excused by the Code.

6.09 Books and Records; Accountants. Maintain proper books of record and account, in which entries full, true and correct in all material respects in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties

or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Subsidiary, as the case may be.

6.10 Inspection Rights.

(a) Permit representatives and independent contractors of the Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and (in the presence of a Responsible Officer of the Parent or the Lead Borrower) Registered Public Accounting Firm, all at the expense of the Loan Parties and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Lead Borrower; provided, however, that when a Default or an Event of Default exists the Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and without advance notice.

(b) Permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct commercial finance examinations and other evaluations of the Loan Parties, including, without limitation, of (i) the Lead Borrower's practices in the computation of the Revolving Borrowing Base, (ii) the assets included in the Revolving Borrowing Base, and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, and (iii) the Loan Parties' business plan, forecasts and cash flows. The Loan Parties shall pay the reasonable and documented out-of-pocket fees and expenses of the Agent and such professionals with respect to any such commercial finance examinations.

(c) Permit the Agent or professionals (including appraisers) retained by the Agent to conduct appraisals of the Borrowers' Inventory. The Loan Parties shall pay the fees and expenses of the Agent and such professionals with respect to any such Inventory appraisals.

(d) Permit the Agent or professionals (including appraisers) retained by the Agent to conduct appraisals of the Eligible Real Estate. The Loan Parties shall pay the fees and expenses of the Agent and such professionals with respect to any such real estate appraisal.

(e) Permit the Agent, from time to time, to engage a geohydrologist, an independent engineer or other qualified consultant or expert, reasonably acceptable to the Agent, at the expense of the Loan Parties, to undertake Phase I environmental site assessments during the term of this Agreement of the affected Eligible Real Estate. Environmental assessments may include detailed visual inspections of the affected Eligible Real Estate, including, without limitation, any and all storage areas, storage tanks, drains, dry wells and leaching areas, if recommended by the Phase I environmental assessment, and the taking of soil samples, surface water samples and ground water samples, as well as such other investigations or analyses as are reasonably necessary for a determination of the compliance of the affected Eligible Real Estate and the use and operation thereof with all applicable Environmental Laws. The Borrowers will, and will cause each of their Subsidiaries to, cooperate in all respects with the Agent and such third parties to enable such assessment and evaluation to be timely completed in a manner reasonably satisfactory to the Agent.

6.11 Additional Loan Parties. Notify the Agent at least fifteen (15) Business Days prior any Person becoming a Subsidiary of a Loan Party, and promptly thereafter (and in any event within thirty (30) days or such longer period as the Agent may agree), obtain the Agent's consent to such Person becoming a Subsidiary and cause any such Person (a) which is not a CFC to (i) become a Loan Party by executing and delivering to the Agent a joinder to this Agreement or a Joinder to the Facility Guaranty or such other

documents as the Agent shall deem appropriate for such purpose, (ii) grant a Lien to the Agent on such Person's assets of the same type that constitute Collateral to secure the Obligations, and (iii) deliver to the Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and, if requested by Agent, customary opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), and (b) if any Equity Interests or Indebtedness of such Person are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness (except that, if such Subsidiary is a CFC, the Equity Interests of such Subsidiary to be pledged may be limited to 65% of the outstanding voting Equity Interests of such Subsidiary and 100% of the non-voting Equity Interests of such Subsidiary), in each case in form, content and scope reasonably satisfactory to the Agent. In no event shall compliance with this Section 6.11 waive or be deemed a waiver or consent to any transaction giving rise to the need to comply with this Section 6.11 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower or Guarantor hereunder or permit the inclusion of any acquired assets in the computation of the Revolving Borrowing Base.

6.12 Cash Management. Each Loan Party will, and will cause its Subsidiaries to, maintain cash management systems in compliance with the Cash Management Order, the Orders and the Approved Budget.

6.13 Information Regarding the Collateral. Furnish to the Agent at least fifteen (15) days (or such shorter period as the Agent shall agree) days prior written notice of any change in: (i) any Loan Party's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (ii) the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility); (iii) any Loan Party's organizational structure or jurisdiction of incorporation or formation; or (iv) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization. The Loan Parties shall not effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest, subject only to Permitted Encumbrances having priority either pursuant to applicable Law or to the extent expressly permitted to have priority pursuant to the other terms of this Agreement, in all the Collateral for its own benefit and the benefit of the other Credit Parties (to the extent a security interest in such Collateral can be perfected by the filing of a financing statement).

6.14 Reserved.

6.15 Environmental Laws.

(a) Conduct its operations and keep and maintain its Real Estate in compliance with all Environmental Laws, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect; (b) obtain and renew all environmental permits for its operations and properties except where the failure to do so would not reasonably be expected to have a Material Adverse Effect; and (c) implement any and all investigation, remediation, removal and response actions that are necessary to comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that (i) its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP or

(ii) failure to undertake any cleanup, removal, remedial or other action would not reasonably be expected to have a Material Adverse Effect.

6.16 Further Assurances.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any Law, or which the Agent may request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) Subject to the Interim Order or the Final Order, as applicable, if any material assets are acquired by any Loan Party after the Closing Date (other than (i) assets constituting Collateral under the Security Documents that become subject to the perfected first-priority Lien under the Security Documents upon acquisition thereof and (ii) Excluded Property (as defined in the Security Agreement)), notify the Agent thereof, and the Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or shall be requested by the Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section 6.16, all at the expense of the Loan Parties. In no event shall compliance with this Section 6.16(b) waive or be deemed a waiver or consent to any transaction giving rise to the need to comply with this Section 6.16(b) if such transaction was not otherwise permitted by this Agreement and the Interim Order of the Final Order, as applicable, or constitute or be deemed to constitute consent to the inclusion of any acquired assets in the computation of the Revolving Borrowing Base.

(c) Upon the reasonable request of the Agent, cause each of its customs brokers, freight forwarders, consolidators and/or carriers to deliver an agreement (including, without limitation, a Customs Broker/Carrier Agreement) to the Agent covering such matters and in such form as the Agent may reasonably require.

6.17 Compliance with Terms of Leaseholds. Except (a) for leases with respect to the Permitted Store Closing Sales, (b) as otherwise expressly permitted hereunder or under any applicable order of the Court, or (c) where the failure to do so, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, (a) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party is a party and keep such Leases in full force and effect, (b) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled except in the ordinary course of business, consistent with past practices, and (c) notify the Agent of any default by any party with respect to such Leases and cooperate with the Agent in all respects to cure any such default.

6.18 Material Contracts. Subject to the Bankruptcy Code, applicable orders of the Court, the Interim Order or the Final Order, as applicable, except in each case as would not reasonably be expected to have a Material Adverse Effect, (a) perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, (b) maintain each such Material Contract in full force and effect except to the extent such Material Contract is no longer used or useful in the conduct of the business of the Loan Parties in the ordinary course of business, consistent with past practices, and (c) enforce each such Material Contract in accordance with its terms.

6.19 Collateral Updates. Upon the request of the Agent from time to time, deliver, at the Borrowers' expense, to the Agent's Advisors and their designees, in each case, in form satisfactory to the Agent and the Required Lenders, any information requested by the Agent's Advisors in connection with appraisals, collateral audits and/or valuations of the Collateral.

6.20 Use of Proceeds. Subject to the terms and conditions herein, use Cash Collateral, the proceeds of Revolving Loans made hereunder and of Letters of Credit issued hereunder, on or after the Closing Date, and in each case in accordance with the Approved Budget, solely (i) to fund the Chapter 11 Cases in accordance with the Orders, (ii) for the financing of Borrowers' and their 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, (iii) for certain other Prepetition and pre-filing expenses that are approved by the Court and to pay the Prepetition Obligations, including as provided in Section 2.01(c), (iv) payment of the Carve-Out and (v) for other lawful purposes of the Borrowers expressly permitted herein. The Loan Parties shall not be permitted to use the proceeds of the Revolving Loans, Letters of Credit or any Cash Collateral in contravention of the provisions of the Loan Documents, the applicable Order, the Approved Budget or the applicable Debtor Relief Laws, including any restrictions or limitations on the use of proceeds contained therein. Nothing in this Agreement, including this Section 6.20, shall prohibit the Post-Petition payment of Prepetition Obligations, including principal, interest, fees, penalties or recoverable costs, due and payable in connection with the Prepetition Credit Agreement with the proceeds of the Collateral (as defined herein) or Collateral (as defined in the Prepetition Credit Agreement).

6.21 Approved Budget.

(a) Use the Revolving Loans and other extensions of credit by the Loan Parties under this Agreement and the other Loan Documents in accordance with the Approved Budget (subject to variances permitted hereunder). The initial Approved Budget shall depict, on a weekly basis, cash revenues, cash receipts, expenses, professional fees and disbursements (including ordinary course operating expenses, expenses related to the Chapter 11 Cases (including Attorney Costs of the Loan Parties and fees of the Debtors' Advisors), asset sales and any other fees and expenses relating to the Credit Facility), net cash flow, Excess Availability and liquidity, for the 13-week period from the Closing Date and such initial Approved Budget shall be approved by, and be in form and substance satisfactory to, the Agent and the Required Lenders in their reasonable discretion (it being acknowledged and agreed that the initial Approved Budget attached hereto as Annex A is approved by and satisfactory to the Agent and the Required Lenders in form and substance). The Approved Budget shall be updated, modified or supplemented by the Borrowers from time to time with the written consent of the Agent and the Required Lenders and upon the reasonable request of the Agent, but in any event the Approved Budget shall be updated by the Borrowers 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 by, and shall be in form and substance satisfactory to, the Agent and Required Lenders in their sole discretion and no such updated, modified or supplemented budget shall be effective until so approved (provided, that the Loan Parties, the Agent and the Required Lenders shall work in good faith to reach agreement on any updated, modified or supplemented budget within four (4) Business Days after receipt of such proposed budget) and once so approved shall be deemed an Approved Budget; provided, however, that in the event the Agent and the Required Lenders, on the one hand, and the Loan Parties, on the other hand, cannot agree (each acting reasonably) 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 Agent shall be accompanied by such supporting documentation as reasonably requested by the 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 Cash Receipts, measured on a cumulative basis, for any Cumulative Four Week Period, to be less than 85% of the Budgeted Cash Receipts, measured on a cumulative basis, for any Cumulative Four Week Period, (ii) the Actual Disbursement Amount, measured on a cumulative basis, for any Cumulative Four Week Period to exceed 115% of the Budgeted Disbursement Amount, measured on a cumulative basis, for any such Cumulative Four Week Period, and (iii) Excess Availability, at any time during the Prior Week, to be less than 85% of Budgeted Excess Availability during such week; provided, however, the Excluded Disbursements shall not be counted for purposes of the calculating the variances under this paragraph.

(c) Deliver to the Agent, together with the delivery of each Borrowing Base Certificate, an Information Certificate (the "Information Certificate"), in the form attached hereto as Exhibit F, and such Information Certificate shall include such detail as is reasonably satisfactory to the Agent and the Required Lenders, signed by a Responsible Officer of the Lead Borrower certifying that (i) the Loan Parties are in compliance with the covenants contained herein 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 an Approved Budget Variance Report, each of which shall be prepared by the Borrowers as of the last day of the Cumulative Four Week Period, and shall be in form and substance reasonably satisfactory to the Agent and the Required Lenders.

(d) The Agent and the Lenders (i) may assume that the Loan Parties will comply with the Approved Budget (subject to variances permitted hereunder), (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, other than the Carve-Out as provided in the Orders. The line items in the Approved Budget for payment of interest, expenses and other amounts to the 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.

6.22 Case Milestones. Comply with each of the Case Milestones.

6.23 Debtors' Advisors; Liquidators. Continue to retain the Debtors' Advisors and a nationally recognized retail liquidator that is reasonably acceptable to the Agent and the Required Lenders, and shall retain such additional advisors as may be reasonably requested by the Agent, in each case, on terms and conditions satisfactory to the Agent and the Required Lenders. The Loan Parties and their representatives will fully cooperate with any such advisors, liquidators and consultants (including the Debtors' Advisors) and grant them full and complete access to the books and records of the Loan Parties. Notwithstanding anything to the contrary in this Section 6.23, none of the Loan Parties will be required to disclose or permit access to any document, information or other matter (i) in respect of which disclosure to the Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (ii) that is subject to attorney client or similar privilege or constitutes attorney work product.

6.24 Agent's Advisors. The 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 Agent may deem necessary to provide advice, analysis and reporting for the benefit of the Agent and the Lenders. The Loan Parties shall pay all fees and expenses of each Agent's Advisor and all such fees and expenses shall

constitute Obligations and be secured by the Collateral. The Loan Parties and their advisors, including the Debtors' Advisors, shall grant access to, and cooperate in all respects with, the Agent, the Lenders, the Agent's Advisors, and any other representatives of the foregoing and provide all information that such parties may request in a timely manner. Notwithstanding anything to the contrary in this Section 6.24, none of the Loan Parties will be required to disclose or permit access to any document, information or other matter (i) in respect of which disclosure to the Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (ii) that is subject to attorney client or similar privilege or constitutes attorney work product

6.25 Debtor-in-Possession Obligations. Comply in a timely manner with their obligations and responsibilities as debtors-in-possession under the Bankruptcy Code, the Bankruptcy Rules, the Orders and any other order of the Court.

6.26 Adequate Protection Payments. Make adequate protection payments payable in cash on the dates and to the extent required by the Orders.

6.27 First Day Orders. Cause all proposed "first day orders" submitted to the Court to be in accordance with and permitted by the terms of this Agreement in all respects.

ARTICLE VII
NEGATIVE COVENANTS

So long as any Lender shall have any Revolving Loan Commitment hereunder, any Loan, any Prepetition Obligation or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification claims for which a claim has not been asserted), or any Letter of Credit shall remain outstanding, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under the UCC or any similar Law or statute of any jurisdiction a financing statement that names any Loan Party or any Subsidiary thereof as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it or any of its Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income, other than, as to all of the above, Permitted Encumbrances.

7.02 Investments. Make any Investments, except, in each case solely to the extent reflected in the Approved Budget, Permitted Investments; provided that, if any such Permitted Investment is made in a Person who is not a Loan Party and includes Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of the Collateral, the purchaser, assignee or other transferee thereof shall agree in writing to be bound by a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent.

7.03 Indebtedness; Disqualified Stock.

(a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness; provided, that the accrual of interest and the accretion or amortization of original issue discount on Indebtedness and the payment of interest in the form of additional Indebtedness originally incurred in accordance with this Section 7.03 will not constitute an incurrence of Indebtedness; or

(b) issue Disqualified Stock.

Notwithstanding any of the foregoing, and except for the Carve-Out, no Indebtedness permitted under this Section 7.03 shall be permitted to have an administrative expense claim status under the Bankruptcy Code senior to or *pari passu* with the super-priority administrative expense claims of (i) the Agent and the Lenders and (ii) the Prepetition ABL Agent and the Prepetition Lenders, in each case, as set forth herein and in the applicable Order.

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, except that, so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) any Subsidiary which is not a Loan Party may merge with (i) a Loan Party; provided that the Loan Party shall be the continuing or surviving Person;

(b) any Subsidiary which is a Loan Party may merge into any Subsidiary which is a Loan Party or into a Borrower; provided that in any merger involving a Borrower, a Borrower shall be the continuing or surviving Person;

(c) [reserved];

(d) any Loan Party or any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to another Loan Party;

(e) [reserved]; and

(f) a merger, dissolution, amalgamation or consolidation, the purpose of which is to effect a Permitted Disposition, shall be permitted.

7.05 Dispositions. Make any Disposition except Permitted Dispositions; provided that, if any such Permitted Disposition is made to a Person who is not a Loan Party and includes Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of the Collateral, the purchaser, assignee or other transferee thereof shall agree in writing to be bound by a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that so long as no Default or Event of Default shall have occurred and be continuing prior, or immediately after giving effect, to, or would result therefrom, each Loan Party or Subsidiary of a Loan Party may make Restricted Payments to any other Loan Party.

7.07 Prepayments of Indebtedness.

(a) Without limiting any other provision hereof, except pursuant to the Approved Budget, 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 Obligations and the Prepetition Obligations or (ii) 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.

(b) Without limiting any other provision hereof, except pursuant to the Approved Budget, without express prior written consent of the Agent and the Required Lenders and pursuant to an order of the Court (including any Order) after notice and a hearing, make any payment or transfer with respect to any Lien or Indebtedness or claim incurred or arising prior to the Petition Date that is subject to the Automatic Stay, whether by way of "adequate protection" under the Bankruptcy Code or otherwise.

7.08 Change in Nature of Business.

(a) In the case of the Parent, engage in any business or activity other than (a) the direct or indirect ownership of all outstanding Equity Interests in the other Loan Parties, (b) maintaining its corporate existence, (c) participating in tax, accounting and other administrative activities as the parent of the consolidated group of companies, including the Loan Parties, (d) the execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder, and (e) activities incidental to the businesses or activities described in clauses (a) through (d) of this Section 7.08(a).

(b) In the case of each of the Loan Parties, engage in any line of business substantially different from the business conducted by the Loan Parties and their Subsidiaries on the Closing Date or any business reasonably related or incidental thereto.

7.09 Transactions with Affiliates. Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Loan Parties or such Subsidiary as would be obtainable by the Loan Parties or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate; provided that the foregoing restriction shall not apply to (a) a transaction between or among the Loan Parties, (b) transactions in existence on the Closing Date and described on Schedule 7.09 hereto, (c) [reserved], and (d) to the extent reflected in the Approved Budget, the payment of reasonable fees and out-of-pocket costs to directors, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Parent or any of its Subsidiaries.

7.10 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Agent; provided, however, that this clause (iv) shall not prohibit (A) [reserved]; (B) customary anti-assignment provisions in contracts restricting the assignment thereof or in contracts for the Disposition of any assets or any Person, provided that the restrictions in any such contract shall apply only to the assets or Person that is to be Disposed of; (C) provisions in leases of real property that prohibit mortgages or pledges of the lessee's interest under such lease or restricting subletting or assignment of such lease; (D) [reserved]; (E) customary restrictions arising under licenses and other contracts entered into in the ordinary course of business; or (F) Contractual Obligations which exist on the Closing Date and (to the extent not otherwise permitted by this Section 7.10) are listed on Schedule 7.10 hereto; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.11 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose.

7.12 Amendment of Material Documents. Amend, modify or waive any of a Loan Party's rights under (a) its Organization Documents in a manner materially adverse to the Credit Parties, or (b) any Material Contract or Material Indebtedness, in each case to the extent that such amendment, modification or waiver would result in a Default or Event of Default under any of the Loan Documents, would be materially adverse to the Credit Parties, or otherwise would be reasonably likely to have a Material Adverse Effect.

7.13 Fiscal Year. Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as required by GAAP.

7.14 Minimum Liquidity. Maintain Liquidity (i) at all times from the Closing Date through (but excluding) the date on which the Temporary Overadvance Period commences and (ii) at all times commencing on the first calendar day after the expiration of the Temporary Overadvance Period through the Maturity Date, in each case, of not less than $5,000,000.

7.15 [Reserved].

7.16 Sanctions. Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Agent, L/C Issuer, or otherwise) of Sanctions.

7.17 Anti-Corruption Laws. Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

7.18 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 34 (Limitations on Use of DIP Proceeds, Cash Collateral, and Carve-Out) of the Interim Order.

7.19 Reclamation Claims. Enter into any agreement to return any of its Inventory to any of its creditors for application against any Prepetition Indebtedness, Prepetition trade payables or other Prepetition claims under Section 546(c) of the Bankruptcy Code or allow any creditor to take any setoff or recoupment against any of its Prepetition Indebtedness, Prepetition trade payables or other Prepetition 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 Prepetition Indebtedness, Prepetition trade payables and other Prepetition claims subject to all such agreements, setoffs and recoupments since the Petition Date would exceed $1,000,000.

7.20 Insolvency Proceeding Claims. Incur, create, assume, suffer to exist or permit any other super-priority administrative claim which is *pari passu* with or senior to the claim of the Agent or the Lenders against the Debtors, except as set forth in the applicable Order.

7.21 Bankruptcy Actions. Seek, consent to, or permit to exist, without the prior written consent of the Agent and the Required Lenders, 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.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Notwithstanding the provisions of Section 362 of the Bankruptcy Code to the extent provided in the applicable Order, with respect to the Debtors and without notice, application or motion, hearing before, or order of the Court or any notice to any Loan Party, any of the following shall constitute an event of default (an "Event of Default"):

(a) Non-Payment. The Borrowers or any other Loan Party fails to pay when and as required to be paid, (i) any amount of principal of, any Loan or any L/C Obligation, or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) any interest on any Loan or on any L/C Obligation or any fee due hereunder which failure continues for two (2) Business Days, or (iii) any other amount payable hereunder or under any other Loan Document which failure continues for three (3) Business Days; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 6.01, 6.02, 6.03, 6.05(a) (as it relates to a Loan Party), 6.07, 6.10, 6.11, 6.12, 6.13, 6.20, 6.21, 6.22, 6.23, 6.24 or 6.25 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 15 days after notice thereof by the Agent to the Lead Borrower; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith (including, without limitation, any Borrowing Base Certificate) shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. Any Loan Party (A) fails to make any payment when due after giving effect to any applicable notice requirement and grace period (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness, or (B) fails to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or

(f) [Reserved]; or

(g) Attachment. Any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any Loan Party and is not released, vacated or fully bonded within thirty (30) days after its issuance or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more judgments or orders for the payment of money in an aggregate amount (as to all such

judgments and orders) exceeding $1,000,000 (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of $1,000,000 or which would reasonably likely result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. (i) Any material provision of any Loan Document or Prepetition Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any material provision of any Loan Document or Prepetition Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document or Prepetition Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under the Orders, any Security Document or any Prepetition Loan Document; or (ii) any Lien purported to be created under the Orders, any Security Document or any Prepetition Loan Document shall cease to be, or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on any Collateral (other than an immaterial portion of the Collateral), with the priority required by the applicable Order, Security Document or Prepetition Loan Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Cessation of Business. Except as otherwise expressly permitted hereunder and under the Orders, any Loan Party shall take any action, or shall make a determination, whether or not yet formally approved by any Loan Party's management or board of directors, to (i) suspend the operation of all or a material portion of its business in the ordinary course, (ii) suspend the payment of any material obligations in the ordinary course or suspend the performance under material contracts in the ordinary course, (iii) solicit proposals for the liquidation of, or undertake to liquidate, all or a material portion of its assets or Store locations, or (iv) solicit proposals for the employment of, or employ, an agent or other third party to conduct a program of closings, liquidations, or "Going-Out-Of-Business" sales of any material portion of its business; or

(m) Loss of Collateral. There occurs any uninsured casualty loss to any material portion of the Collateral; or

(n) Indictment. Any Loan Party is criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business or charged by a Governmental Authority under any law that would reasonably be expected to lead to forfeiture of any material portion of Collateral and such indictment, conviction or charge remains unquashed or undismissed for a period of ninety (90) days or more and, if adversely determined, could reasonably be expected to have a Material Adverse Effect; or

(o) Subordination. (i) The subordination provisions of the documents evidencing or governing any Subordinated Indebtedness (the "Subordination Provisions") shall, in whole or in part,

terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness or such holder shall fail to comply with such Subordination Provisions; or (ii) any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Credit Parties, or (C) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions; or

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

(i) any material breach or failure to comply with the material terms of the Interim Order or the Final Order, as applicable;

(ii) any breach or failure to comply with the Case Milestones;

(iii) 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; (B) to grant any Lien other than Permitted Encumbrances 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 Agent and the other Credit Parties or Prepetition ABL Agent and Prepetition Lenders under Section 363(c) of the Bankruptcy Code without the prior written consent of the Agent and the Required Lenders; or (D) any other action or actions adverse to (x) the Agent and Lenders or Prepetition ABL Agent and Prepetition Lenders or their rights and remedies hereunder, under any other Loan Documents, or their interest in the Collateral or (y) Prepetition ABL Agent and Prepetition Lenders or their rights under the Prepetition Credit Agreement or the other Prepetition Loan Documents or their interest in the Collateral (as defined in the Prepetition Credit Agreement);

(iv) (A) the filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by a Loan Party that does not propose to indefeasibly repay in full in cash the Obligations under this Agreement and the Prepetition Obligations or by any other Person to which the Agent and the Required Lenders do not 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 an order in any of the Chapter 11 Cases confirming a plan of reorganization that (1) is not acceptable to the Agent and the Required Lenders in their sole discretion or (2) 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 Prepetition Obligations on or before the effective date of such plan or plans; (C) the entry of any order terminating any Loan Party's exclusive right to file a plan of reorganization (unless actively contested by the Debtors); or (D) the expiration of any Loan Party's exclusive right to file a plan of reorganization;

(v) (x) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents or the Orders, Cash Management Order, or any other order of the Court approving a sale transaction without the written consent of the Agent and the Required Lenders or the filing by a Loan Party of a motion for reconsideration with respect to the Orders or the Orders shall otherwise not be in full force and effect or (y) any Loan Party or any Subsidiary shall fail to comply with either Order , in any material respect;

(vi) the Court's (A) entry of an order granting relief from the Automatic Stay to permit foreclosure of security interests in assets of the Loan Parties of a value in excess of $1,000,000 or (B) failure of the Court to enter the Final Order within thirty-five (35) days following the commencement of the Chapter 11 Cases (or such other date as may be agreed to by the Agent and the Required Lenders and fixed by the Court);

(vii) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the Agent, any Lender, or any of the Collateral or against the Prepetition ABL Agent, any Prepetition Lender or any Collateral (as defined in the Prepetition Credit Agreement);

(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 consent of the Agent and the Required Lenders, 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 Prepetition Obligations at the closing of such sale or initial payment of the purchase price or effectiveness of such plan, as applicable;

(ix) the dismissal of any Chapter 11 Case 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;

(x) any Loan Party shall file a motion (without consent of the Agent and the Required Lenders) seeking, or the Court shall enter an order granting, relief from or modifying the Automatic Stay (A) to allow any creditor (other than the Agent) to execute upon or enforce a Lien on any Collateral, (B) approving any settlement or other stipulation not approved by the Agent and the Required Lenders 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 $1,000,000 or more or (D) permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole);

(xi) the commencement of a suit or an action (but not including a motion for standing to commence a suit or an action) against the Agent or any Lender or Prepetition ABL Agent or any Prepetition 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 the Agent or such Lender or Prepetition ABL Agent or any Prepetition Lender, that asserts or seeks by or on behalf of a Loan Party, any state or 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 (in each case, other than with respect to any make whole amounts, exit fees, or debt premiums under any prepetition debt) of the Agent or any Lender under the Loan Documents or the Prepetition Obligations or Liens of the Prepetition ABL Agent or Prepetition Lenders under the Prepetition Loan Documents to any other claim, or (y) have a material adverse effect on the rights and remedies of the Agent or any Lender or Prepetition ABL Agent or any Prepetition Lender under any Loan Document or the Prepetition ABL Agent or Prepetition Lenders

under the Prepetition Loan Documents or the collectability of all or any portion of the Obligations under the Loan Documents or the Prepetition Obligations (in each case, other than with respect to any make whole amounts, exit fees, or debt premiums under any prepetition debt);

(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 Prepetition Obligations owing under the Prepetition Loan Documents;

(xiii) the failure of any Loan Party to materially perform any of its obligations under the Interim Order or the Final Order or to perform in any material respects its obligations under the Store Closing Order;

(xiv) the existence of any claims or charges, or the entry of any order of the Court authorizing any claims or charges, other than in respect of this Agreement and the other Loan Documents, or as otherwise permitted under the applicable Loan Documents or permitted under the Orders, entitled to super-priority 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 Agent and the Credit Parties under this Agreement and the other Loan Documents, or there shall arise or be granted by the Court (i) 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 (ii) 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 Orders then in effect (but only in the event specifically consented to by the Agent and the Required Lenders), whichever is in effect;

(xv) the Order 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 Agent and the Required Lenders;

(xvi) an order in the Chapter 11 Cases shall be entered (i) charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Agent and the Credit Parties, or (ii) limiting the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Prepetition ABL 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 Agent, the Credit 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;

(xvii) if the Final Order does not include a waiver, in form and substance satisfactory to the Agent and the Required Lenders, of (i) the right to surcharge the Collateral under Section 506(c) of the Bankruptcy Code and (ii) any ability to limit the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Prepetition ABL Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date;

(xviii) an order of the Court shall be entered denying or terminating use of cash collateral by the Loan Parties;

(xix) any Loan Party shall challenge, support or encourage a challenge of any payments made to the Agent or any Lender with respect to the Obligations or the Prepetition ABL Agent or the Prepetition Lenders with respect to the Prepetition Obligations, or, without the consent of the Agent, the filing of any motion by the Loan Parties seeking approval of (or the entry of an order by the Court approving) adequate protection to any Prepetition ABL Agent or Prepetition Lender that is inconsistent with the Orders;

(xx) without the consent of the Agent and the Required Lenders, the entry of any order by the Court granting, or the filing by any Loan Party or any of its Subsidiaries of any motion or other request with the Court (in each case, other than the Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without the consent of the Agent and the Required Lenders or to obtain any financing under Section 364 of the Bankruptcy Code other than the Loan Documents;

(xxi) if, unless otherwise approved by the Agent and the Required Lenders, an order of the Court shall be entered providing for a change in venue with respect to the Chapter 11 Cases and such order shall not be reversed or vacated within 10 days;

(xxii) without the consent of the Agent and the Required Lenders, any Loan Party or any Subsidiary thereof shall file any motion or other request with the 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 Orders), whether senior, equal or subordinate to the Agent's liens and security interests; or (b) to modify or affect any of the rights of the Agent or the Lenders under the Orders or the Loan Documents and related documents by any plan of reorganization confirmed in the Chapter 11 Cases or subsequent order entered in the Chapter 11 Cases;

(xxiii) any Loan Party or any Subsidiary thereof shall take any action in support of any matter set forth in this Section 8.01(p) 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;

(xxiv) any Debtor shall be enjoined from conducting any material portion of its business, any disruption of the material business operations of the Debtors shall occur, or any material damage to or loss of material assets of any Debtor shall occur;

(xxv) the commencement of any winding-up or liquidation proceeding under Chapter 7 of the Bankruptcy Code or any other applicable Law;

(xxvi) [reserved]; or

(xxvii) failure of the Borrower or any other Loan Party to use the proceeds of the Loans as set forth in and in compliance with the Approved Budget (subject to the variances permitted herein, and disregarding the Excluded Disbursements) and this Agreement.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Agent may, or, at the request of the Required Lenders (or, in the event that there are only two (2) Lenders hereunder, any Lender so long as such Lender is a Lender as of the Closing Date and maintains a Revolving Loan Commitment not less than the Revolving Loan Commitment of such Lender as of the Closing Date) shall, take any or all of the following actions, in each case, subject to the applicable Order and

notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion, hearing before or order of the Court:

(a) declare the Revolving Loan Commitments of each Lender to make Revolving Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such Revolving Loan Commitments and obligations shall be terminated, but without affecting the Agent's Liens or the Obligations, and terminate, reduce or restrict the right or ability of the Loan Parties to use any Cash Collateral (as defined in the Orders) (other than, during the Remedies Notice Period, cash collateral for payroll and other expenses that the Agent approves as critical to keep the business of the Loan Parties operating in accordance with the Approved Budget);

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, the Prepetition Obligations and all other Obligations (excluding Other Liabilities not then due and payable) 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;

(c) require that the Loan Parties Cash Collateralize the L/C Obligations;

(d) 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 Agent and the Required Lenders 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 Agent's designees in accordance with and subject to Section 365 of the Bankruptcy Code);

(e) subject to the Remedies Notice Period, whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, (i) proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties and (ii) take any and all actions described in the Order; and

(f) declare that the application of the Carve-Out has occurred through delivery of a Carve-Out Trigger Notice (as defined in the Order).

(g) No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

(h) At any hearing during the Remedies Notice Period to contest the enforcement of remedies, the only issue that may be raised by any Debtor in opposition thereto shall be whether, in fact, an Event of Default has occurred; provided that such Debtor may also seek certain remedies with respect to the occurrence of a Termination Date (as defined in the Orders) (unless the Event of Default giving rise to the Termination Declaration (as defined in the Orders) is the Debtors' failure to enter into a stalking horse agreement in accordance with the Case Milestones); and the Loan Parties hereby waive their right to and shall not be entitled to seek any other relief, including, without limitation, 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 Agent or the Credit Parties, as set forth in this Agreement, the applicable Order or other Loan

Documents. Except as expressly provided above in this Section 8, to the maximum extent permitted by applicable law, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Obligations have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the Orders and the provisions of Section 2.16, be applied by the Agent in the following order:

First, to permanently reduce the Prepetition Revolving Credit Loans (if any) until paid in full;

Second, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting fees, indemnities, amounts owing under Section 10.04(a) and other amounts (including Attorney Costs of Morgan, Lewis & Bockius LLP and Reed Smith LLP, respectively (and of any local or special counsel retained by any Agent in each relevant jurisdiction) and amounts payable under Article III) payable to the Agent;

Third, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities (including indemnities due under Section 10.04 hereof), amounts owing under Section 10.04(a), and other amounts (other than principal, interest and fees) payable to the Revolving Loan Lenders and the L/C Issuer (including amounts owing under Section 10.04(a) to the respective Revolving Loan Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Third payable to them;

Fourth, to the extent not previously reimbursed by the Revolving Loan Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances;

Fifth, to payment of that portion of the Obligations constituting principal and accrued and unpaid interest on any Temporary Overadvances;

Sixth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Committed Revolving Loans, L/C Borrowings and other Obligations (but excluding Other Liabilities), and fees (including Letter of Credit Fees and Commitment Fees), ratably among the Revolving Loan Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Sixth payable to them;

Seventh, to payment of that portion of the Obligations constituting unpaid principal of the Committed Revolving Loans and L/C Borrowings, ratably among the Revolving Loan Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to the Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit;

Ninth, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations as provided in Section 10.04, but excluding any Other Liabilities), ratably among the Credit Parties in proportion to the respective amounts described in this clause Ninth held by them;

Tenth, to payment of that portion of the Obligations arising from Cash Management Services, ratably among the Credit Parties in proportion to the respective amounts described in this clause Tenth held by them;

Eleventh, to payment of all other Obligations arising from Bank Products, ratably among the Credit Parties in proportion to the respective amounts described in this clause Eleventh held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by the Court or applicable Law.

Amounts shall be applied to each category of Obligations set forth above until paid in full in cash 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. Amounts distributed with respect to any L/C Obligations shall be the lesser of the applicable L/C Obligations amount last reported to the Agent or the actual L/C Obligations amount as calculated by the methodology reported to the Agent for determining the amount due. The application of amounts under this Section 8.03 to the Prepetition Revolving Credit Loans shall be applicable only if and to the extent that any such Prepetition Revolving Credit Loans remain outstanding after the occurrence of the full roll of the Prepetition Revolving Credit Loans into the Obligation as described in Section 2.01(c).

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Eighth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn, paid or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above. Notwithstanding anything to the contrary in this Agreement, the remaining balance of the Cash Collateral will be returned to the Borrowers when all Letters of Credit have been terminated or discharged, all Revolving Loan Commitments have been terminated and all Obligations (other than contingent Obligations that by their terms survive the termination) have been Paid in Full (as defined in the Orders).

Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to the Obligations otherwise set forth above in this Section.

The allocations set forth in this Section 8.03 are solely to determine the rights and priorities of the Agent and the Lenders as among themselves, may be changed by agreement among them without the consent of any Loan Party and are subject to Section 2.16 (regarding Defaulting Lenders). This Section 8.03 is not for the benefit of or enforceable by any Loan Party.

8.04 License; Access; Cooperation. The 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 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. Upon the occurrence and the continuance of an Event of Default and the exercise by the Agent or Lenders of their rights and remedies under this Agreement and the other Loan Documents, the 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 it being understood and agreed that the Agent and its representatives (and persons employed on their behalf), may continue to operate, service, maintain, process and sell the Collateral, as well as to engage in bulk sales of Collateral. Upon the occurrence and the continuance of an Event of Default and the exercise by the Agent or Lenders of their rights and remedies under this Agreement and the other Loan Documents, Borrowers shall assist the Agent and Lenders in effecting a sale or other disposition of the Collateral upon such terms as are reasonably acceptable to the Agent and Required Lenders.

8.05 Lift of Stay; Stay of Proceedings. Subject to the applicable Order, the Automatic Stay shall be modified and vacated to permit the 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 Court.

ARTICLE IX
THE AGENT

9.01 Appointment and Authority.

(a) Appointment. Each of the Lenders (in its capacity as a Lender) and the L/C Issuer hereby irrevocably appoints, designates and authorizes Bank of America to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each Lender authorizes the Agent to consent, on behalf of each Lender, to the Interim Order and the Final Order, each to be negotiated between the Borrowers and Guarantors, the Agent and the Required Lenders, and certain other parties and statutory committees appointed pursuant to Sections 327 and 1103 of the Bankruptcy Code. The provisions of this Article are solely for the benefit of the Agent and the other Credit Parties, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. In addition, to the extent required under the laws of any jurisdiction other than the United States of America, each of the Credit Parties hereby grants to the Agent any required powers of attorney to execute any Security Document or other Loan Document governed by the laws of such jurisdiction on such Credit Party's behalf.

(b) Collateral Agent. The Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders and the L/C Issuer hereby irrevocably appoints and authorizes the Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(f), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

9.02 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not

the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

9.03 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agent and their Related Parties:

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

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Applicable Lenders, provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

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

(iv) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or any L/C Issuer, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates, that is communicated to, obtained or in the possession of, the Agent or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Agent herein.

(b) Neither the Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Applicable Lenders, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given in writing to the Agent by the Loan Parties, a Lender or the L/C Issuer. In the event that the Agent obtains such actual knowledge or receives such a notice, the Agent shall give prompt notice thereof to each of the other Credit Parties. Upon the occurrence of a Default or an Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action,

with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful.

(c) Neither the Agent nor any of its Related Parties have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

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

9.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Agent. Notice. The Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Lead Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C

Issuer, appoint a successor Agent meeting the qualifications set forth above; provided that in no event shall any successor Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(a) Defaulting Lender. If the Person serving as Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law, by notice in writing to the Lead Borrower and such Person remove such Person as Agent and, in consultation with the Lead Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(b) Effect of Resignation or Removal. With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring or removed Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Agent as provided for above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring or removed Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Agent was acting as Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including, without limitation, (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Credit Parties and (B) in respect of any actions taken in connection with transferring the agency to any successor Agent.

(c) L/C Issuer. Any resignation or removal by Bank of America as Agent pursuant to this Section shall also constitute its resignation or removal as L/C Issuer. If Bank of America resigns or is removed as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation or removal as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). Upon the appointment by the Borrowers of a successor L/C Issuer hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (iii) the retiring L/C Issuer shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

9.07 Non-Reliance on Agent and Other Lenders. Each Lender and the L/C Issuer expressly acknowledges that the Agent has not made any representation or warranty to it, and that no act by the Agent hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party of any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Agent to any Lender or the L/C Issuer as to any matter, including whether the Agent has disclosed material information in their (or their Related Parties') possession. Each Lender and the L/C Issuer represents to the Agent that it has, independently and without reliance upon the Agent, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrowers hereunder. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except as provided in Section 9.12, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent. Each Lender and the L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and the L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and the L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

9.08 [Reserved].

9.09 Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer, the Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer, the Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer the Agent and such Credit Parties under Sections 2.03(i), 2.03(j), 2.09 and 10.04) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Agent and to pay to the Agent and, in the event that the Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.09 and 10.04.

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

The Credit Parties hereby irrevocably authorize the Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Credit Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 10.01 of this Agreement), (iii) the Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Credit Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Credit Party or any acquisition vehicle to take any further action.

9.10 Collateral and Guaranty Matters. The Credit Parties irrevocably authorize the Agent, at its option and in its discretion, subject to the applicable Order,

(a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Revolving Loan Commitments and payment in full of all Obligations and Prepetition Revolving Credit Loans (other than contingent indemnification obligations for which no claim has been asserted) and the expiration, termination or Cash Collateralization of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01;

(b) to subordinate any Lien on any property granted to or held by the Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (h) of the definition of Permitted Encumbrances; and

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

Upon request by the Agent at any time, the Applicable Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Facility Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

The Agent 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 Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 Notice of Transfer. The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Assumption shall have become effective as set forth in Section 10.06.

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

(a) agrees to furnish the Agent (at such frequency as the Agent may reasonably request) with a summary of all Other Liabilities due or to become due to such Lender. In connection with any distributions to be made hereunder, the Agent shall be entitled to assume that no amounts are due to any Lender on account of Other Liabilities unless the Agent has received written notice thereof from such Lender and if such notice is received, the Agent shall be entitled to assume that the only amounts due to such Lender on account of Other Liabilities is the amount set forth in such notice;

(b) is deemed to have requested that the Agent furnish, and the Agent agrees to furnish, such Lender, promptly after they become available, copies of all Borrowing Base Certificates, Information Certificates, Approved Budgets, Approved Budget Variance Reports and financial statements required to be delivered by the Lead Borrower hereunder;

(c) is deemed to have requested that the Agent furnish, and the Agent agrees to furnish, such Lender, promptly after they become available, copies of all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the "Reports");

(d) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy of the Borrowing Base Certificates, Information Certificates, Approved Budgets, Approved Budget Variance Reports, financial statements or Reports, and shall not be liable for any information contained in any Borrowing Base Certificate, Information Certificate, Approved Budget, Approved Budget Variance Report, financial statement or Report;

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

(f) agrees to keep all Borrowing Base Certificates, Information Certificates, Approved Budgets, Approved Budget Variance Reports, financial statements and Reports confidential in accordance with the provisions of Section 10.07 hereof; and

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

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

9.14 Indemnification of Agent. Without limiting the obligations of Loan Parties hereunder, to the extent that the Loan Parties for any reason fails to indefeasibly pay any amount required under Section 10.04 to be paid by them to the Agent (or any sub-agent thereof), the Lenders shall indemnify the Agent, any sub-agent thereof, the L/C Issuer and any Related Party, as the case may be ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent, any sub-agent thereof, the L/C Issuer and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent, any sub-agent thereof, the L/C Issuer and their Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's, any sub-agent's, the L/C Issuer's and their Related Parties' gross

negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction.

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

9.16 Certain ERISA Matters. Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and not, for the avoidance of doubt, to or for the benefit of the Lead Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Loan Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Loan Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Revolving Loan Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Loan Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Loan Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that the Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans,

the Letters of Credit, the Revolving Loan Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

9.17 Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Agent makes a payment hereunder in error to any other Credit Party, whether or not in respect of an Obligation due and owing by the Borrowers at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to the Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation. Each Credit Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount.

ARTICLE X
MISCELLANEOUS

10.01 Amendments, Etc.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Agent, with the consent of the Required Lenders, and the Lead Borrower or the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(i) increase the Revolving Loan Commitment of any Lender (or reinstate any Revolving Loan Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(ii) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including the Maturity Date) of principal, interest, fees or other amounts due to such Lender hereunder or under any of the other Loan Documents without the written consent of such Lender, or (ii) any scheduled or mandatory reduction or termination of the Revolving Loan Commitments hereunder or under any other Loan Document, without the written consent of such Lender;

(iii) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing held by such Lender, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate;

(iv) as to any Lender, change Section 2.13 or Section 8.03 in a manner that would alter the order of payments or the pro rata sharing of payments required thereby without the written consent of such Lender;

(v) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or under any other Loan Document or make any determination or grant any consent hereunder or thereunder, without the written consent of each Lender;

(vi) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written consent of each Lender;

(vii) except for Permitted Dispositions or as provided in Section 9.10, release all or substantially all of the Collateral from the Liens of the Security Documents without the written consent of each Lender;

(viii) change the definition of the term "Revolving Borrowing Base" or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrowers would be increased without the written consent of each Lender; provided that the foregoing shall not limit the discretion of the Agent to change, establish or eliminate any Reserves;

(ix) (a) modify the definition of Permitted Overadvance so as to increase the amount thereof or, except as otherwise provided in such definition, the time period for which a Permitted Overadvance may remain outstanding, (b) modify the definition of Temporary Overadvance Maximum Amount, (c) modify the definition of Temporary Overadvance Conditions, or (d) modify the definition of Temporary Overadvance Period to extend the time period for which Revolving Loans made pursuant to Section 2.01(b) may remain outstanding, in each case, without the written consent of each Lender; and

(x) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written consent of each Lender;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) [reserved]; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of any Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, (A) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the Applicable Lenders other than Defaulting Lenders), except that (1) the Revolving Loan Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (2) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such

Defaulting Lender; and (B) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (x) no provider or holder of any Bank Products or Cash Management Services shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any Loan Party, and (y) any Loan Document may be amended and waived with the consent of the Agent at the request of the Borrowers without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents.

(c) If any Lender does not consent (a "Non-Consenting Lender") to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of such Lender and that has been approved by the Required Lenders, the Lead Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Lead Borrower to be made pursuant to this paragraph).

(d) Notwithstanding anything to the contrary herein, (i) this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Lead Borrower and the Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Revolving Loan Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement, and (ii) the Agent may amend or modify this Agreement and any other Loan Document to (A) cure any ambiguity, omission, mistake, defect or inconsistency therein so long as, in each case the Lenders shall have received at least five (5) days' prior written notice thereof and the Agent shall not have received, within five (5) days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment or (B) grant a new Lien for the benefit of the Credit Parties, extend an existing Lien over additional property (other than Real Estate) for the benefit of the Credit Parties or join additional Persons as Loan Parties.

10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, to the address, fax number, electronic mail address or telephone number as follows:

(i) if to the Loan Parties, the Agent or the L/C Issuer, to the address, fax number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, fax number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Agent, the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging, and Internet or intranet websites) pursuant to procedures approved by the Agent; provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent, the L/C Issuer or the Lead Borrower each may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices and other communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Change of Address, Etc. Each of the Loan Parties, the Agent and the L/C Issuer may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the Lead Borrower, the Agent and the L/C Issuer. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, fax number and e-mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(d) Reliance by Agent, L/C Issuer and Lenders. The Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties. All telephonic notices to and other telephonic

communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at Law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Loan Parties shall, jointly and severally, reimburse the Agent and its Affiliates, for all reasonable and documented legal (including all Attorney Costs of Morgan, Lewis & Bockius LLP and Reed Smith LLP, respectively (and of any local or special counsel retained by any Agent in each relevant jurisdiction)), accounting, commercial finance examination, appraisal, liquidation or valuation consultant, consulting, financial advisory and other fees, costs and expenses incurred by it (including, for the avoidance of doubt, the fees, costs and expenses of the Agent's Advisors) in connection with (a) negotiation, preparation, due diligence, syndication, execution and delivery of any Loan Documents, the Prepetition 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 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 L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit, or any demand for payment thereunder; (d) each commercial finance examination, inspection, audit or appraisal with respect to any Loan Party or Collateral, whether prepared by the Agent's personnel or a third party; and (e) otherwise incurred in connection with the Loan Documents, the Prepetition Loan Documents or the Chapter 11 Cases. The Loan Parties shall also reimburse the Agent, the L/C Issuers and Lenders for all

reasonable and documented costs and expenses incurred by them (whether during 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 during any workout, restructuring or negotiations in respect of Loans, Letters of Credit, Loan Documents or the transactions contemplated thereby), including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. For the avoidance of doubt, the Loan Parties shall reimburse the Agent and its Affiliates for all reasonable and documented legal, accounting, appraisal, consulting, financial advisory and other fees, costs and expenses 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:

(i) any 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;

(ii) any litigation, contest, dispute, suit, proceeding or action (whether instituted by the Agent, any Lender, any Loan Party 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 Prepetition Loan Documents 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 Loan Party or any other Person that may be obligated to the 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 (ii) 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)

(iii) any attempt to enforce or prosecute any rights or remedies of the Agent against any or all of the Loan Parties or any other Person that may be obligated to the 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;

(iv) any work-out or restructuring of the Obligations prior to or during the pendency of one or more Events of Default;

(v) the obtaining of approval of the Loan Documents by the Court or any other court;

(vi) 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 Agent, 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 the Agent's Liens with respect to any Collateral), the Prepetition Loan Documents, Loan Documents or Obligations, including any lender liability or other claims;

(vii) 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 (iv) settle or otherwise satisfy any taxes, charges or Liens with respect to any Collateral;

(viii) 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

(ix) including, as to each of clauses (i) through (viii) above, all reasonable and documented attorneys' and other professional and service providers' (including the Agent's Advisors') 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 10.04, all of which shall be payable by the Loan Parties to the 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 10.04 shall constitute Obligations secured by the Collateral. The agreements in this Section 10.04 shall survive the termination of the aggregate Commitments and repayment of all other Obligations. If the Loan Parties fail to pay when due any amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of the Loan Parties by the Agent in its discretion by charging any loan account(s) of any Loan Party, without notice to or consent from any Loan Party, and any amounts so paid shall constitute Loans hereunder.

The obligations of the Loan Parties under this Section 10.04 shall not be limited by the Approved Budget.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless (on an after tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, costs, and related expenses (including the reasonable and documented fees, disbursements and other charges of counsel, but limited to (i) one firm of outside counsel for all Indemnitees and (ii) one firm of local counsel for all Indemnitees in each appropriate jurisdiction (provided that, if an Indemnitee notifies the Lead Borrower that such firm's representation of such Indemnitee would be inappropriate due to an actual or potential conflict of interest, such Indemnitee shall be entitled to engage one firm of outside counsel representing such Indemnitee), but excluding Taxes, which shall be governed by Section 3.01), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents

presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, any bank advising or confirming a Letter of Credit and any other Person seeking to enforce the rights of a Borrower, beneficiary, transferee, or assignee or Letter of Credit proceeds or the holder of an instrument or document related to any Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, any Person which has entered into a control agreement with any Credit Party hereunder, (v) the Chapter 11 Cases or (vi) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, willful misconduct or bad faith of such Indemnitee or (y) result from a claim brought by a Borrower or any other Loan Party against an Indemnitee for breach of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. The obligations of the Loan Parties under this Section 10.04(b) shall not be limited by the Approved Budget.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability for special, indirect, consequential or punitive damages arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof; provided that the Indemnitees shall remain liable for any direct or actual damages determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnitees' gross negligence, willful misconduct, bad faith or material breach hereunder or under any other Loan Document.

(d) Payments. All amounts due under this Section 10.04 shall be payable on demand therefor.

(e) Limitation of Liability. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(f) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under clause (a) or (b) of this Section to be paid by it to the Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the total credit exposure under the Revolving Loan Facility at such time) of such unpaid amount (including any such unpaid amount in

respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further 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 Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) or the L/C Issuer in connection with such capacity. The obligations of the Lenders under this clause (f) are subject to the provisions of Section 2.12(d).

(g) Survival. The agreements in this Section and the indemnity provisions of Section 10.02(d) shall survive the resignation of any Agent or the L/C Issuer, the assignment of any Revolving Loan Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Revolving Loan Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Loan Commitment(s) and the Loans (including for purposes of this

Section 10.06(b), participations in L/C Obligations) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Loan Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Revolving Loan Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Revolving Loan Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall be $5,000,000 or a whole multiple in excess thereof unless each of the Agent; provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Revolving Loan Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) [reserved]; and

(B) the consent of the Agent and the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Revolving Loan Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Loan Parties or any of the Loan Parties' Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries or Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Lead Borrower and the Agent, the applicable pro rata share of Revolving Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent, the L/C Issuer or any Revolving Loan Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Revolving Loans and participations in Letters of Credit in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Agent, acting solely for this purpose as an agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Revolving Loan Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations.

(i) Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Agent, sell participations to any Person (other than a natural person, or a holding

company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender, or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Loan Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Loan Parties, the Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (i) through (iv), (vi) and (vii) of the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.02 as though it were a Lender.

(iii) Each Lender that sells a participation shall, acting solely for this purpose 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 stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (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 Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender 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. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank;

provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Resignation as L/C Issuer after Assignment or Resignation. Any resignation by Bank of America as Agent pursuant to Section 9.06 hereof shall also constitute its resignation as L/C Issuer.

10.07 Treatment of Certain Information; Confidentiality. Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, Approved Funds, and to its and its Affiliates' and Approved Funds' respective partners, directors, officers, employees, investors, partners, credit providers, agents, funding sources, attorneys, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Laws or regulations or by any subpoena or similar legal process and in connection with the Chapter 11 Cases, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Swap Contract relating to any Loan Party and its obligations, (g) with the consent of the Lead Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a non-confidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof, provided that, in the case of information received from any Loan Party or any Subsidiary after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Law, including Federal and state securities Laws.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by Law (notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before or order from the Court), to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) or other property at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, regardless of the adequacy of the Collateral, and irrespective of whether or

not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.16 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 Agent, the L/C Issuer and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Lead Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Law (the "Maximum Rate"). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans and other Obligations (other than Other Liabilities not then due and owing) or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous letters of intent, commitment letters, agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto provided that the Fee Letter shall survive the execution and delivery of this Agreement and shall continue to be a binding obligation of each of the parties thereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder (other than contingent indemnity obligations for which claims have not been asserted) shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding. Further, the provisions of Sections 3.01, 3.04, 3.05, and 10.04 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration of the Letters of Credit

or the termination of the Revolving Loan Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent may require such indemnities and collateral security as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities, and (z) any Obligations that may thereafter arise under Section 10.04 hereof.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Agent or the L/C Issuer, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY 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) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE BANKRUPTCY COURT OF THE DISTRICT OF DELAWARE AND/OR THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH BANKRUPTCY COURT, SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE LOAN PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE LOAN 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.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY

JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

10.17 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the Act. Each Loan Party is in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loans will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended. The Loan Parties shall, promptly following a request by the Agent or any Lender, provide all documentation and other information

that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

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

10.19 Time of the Essence. Time is of the essence of the Loan Documents.

10.20 Reserved.

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

10.22 Additional Waivers.

(a) The Obligations are the joint and several obligations of each Loan Party. To the fullest extent permitted by Law, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party, or (iv) any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations after the termination of the Revolving Loan Commitments). The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the

Obligations after the termination of the Revolving Loan Commitments), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise.

(b) To the fullest extent permitted by Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations and the termination of the Revolving Loan Commitments. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all of the Obligations have been indefeasibly paid in full in cash and the Revolving Loan Commitments have been terminated. Each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to 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.

(c) Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all of the Obligations and the termination of the Revolving Loan Commitments. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Borrowers in an amount, for each of such other Borrowers, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101 (32) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

10.23 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of

proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

10.24 Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

10.25 Electronic Execution of Assignments and Certain Other Documents.

(a) The words "execute," "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including 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 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 Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Agent pursuant to procedures approved by it; provided further without limiting the foregoing, upon the request of the Agent, any electronic signature shall be promptly followed by such manually executed counterpart.***

(b) This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a "Communication"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on each of the Loan Parties to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation each of the Loan Parties enforceable against such in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Agent and each of the Credit Parties of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Agent and each of the Credit Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of the such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Agent has agreed to accept such Electronic Signature, the Agent and each of the Credit Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (b) upon the request of the Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof,

"Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

10.26 Keepwell. Each Loan Party that is a Qualified ECP Guarantor at the time the Facility Guaranty or the grant of a security interest under the Loan Documents, in each case, by any Specified Loan Party becomes 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 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 the Facility Guaranty 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 shall remain in full force and effect until payment in full of the Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section to constitute, and this Section 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.

10.27 Conflict of Terms. Except as otherwise provided in this Agreement or any of the other Loan Documents by specific reference to the applicable provisions of this Agreement, if any provision contained in this Agreement conflicts with any provision in any of the other Loan Documents, the provision contained in this Agreement shall govern and control. To the extent that any specific provision hereof is inconsistent with any of the Orders, the Interim Order or Final Order (as applicable) shall control.

10.28 Acknowledgement and Consent to Bail-In of an Affected Financial Institutions. Solely to the extent any Lender or L/C Issuer that is an Affected Financial Institution is a party to this Agreement and 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 or the L/C Issuer that is an Affected 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 the applicable 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 the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected 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 Affected 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 applicable Resolution Authority.

10.29 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[*Remainder of Page Intentionally Left Blank; Signature Pages Follows*.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

BORROWERS:

LL FLOORING, INC.,
as Lead Borrower and as a Borrower

By: _____
Name:
Title:

LL FLOORING SERVICES, LLC,
as a Borrower

By: **LL FLOORING, INC.**
Its: Manager

By: _____
Name:
Title:

GUARANTORS:

LL FLOORING HOLDINGS, INC.,
as Parent and as a Guarantor

By: _____
Name:
Title:

LUMBER LIQUIDATORS LEASING, LLC,
as a Guarantor

By: **LL FLOORING, INC.**
Its: Manager

By: _____
Name:
Title:

LUMBER LIQUIDATORS FOREIGN HOLDINGS, LLC, as a Guarantor

By: **LL FLOORING HOLDINGS, INC.**
Its: Manager

By: _____
Name:
Title:

BANK OF AMERICA, N.A.,
as Agent

By: _____
Name: Matthew Potter
Title: Senior Vice President

BANK OF AMERICA, N.A.,
as a Revolving Loan Lender and as L/C Issuer

By: _____
Name: Matthew Potter
Title: Senior Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Revolving Loan Lender

By: _____
Name:
Title:

DB1/ 149918254.9

Exhibit C

Case Milestones

Each of the following DIP Milestones, Other Milestones, Sale Milestones, Liquidation Pivot Milestones, Required Store Closure Milestones and Real Estate Milestones (each as defined herein), a "Case Milestone" and collectively, the "Case Milestones":

(a) The Debtors shall achieve each of the following milestones (as the same may be extended from time to time with the consent of the DIP ABL Agent (in its sole and absolute discretion) the "DIP Milestones"), in each case on terms and conditions, and subject to documentation in form and substance, reasonably acceptable to the DIP ABL Agent in all respects.

(i) On the Petition Date, the Debtors shall file a motion seeking approval of the facility evidenced by the DIP ABL Facility.

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

(iii) On or before thirty-five (35) days after the Petition Date, the Final Order authorizing and approving the DIP ABL Facility on a final basis shall have been entered by the Court.

(iv) On or before September 30, 2024, the DIP ABL Obligations and the Prepetition ABL obligations shall have been repaid in cash in full (other than the cash collateralization of all letters of credit and contingent exposure).

(v) On or before October 18, 2024, the Revolver Repayment Date shall have occurred.

(b) The Debtors shall achieve each of the following milestones (as the same may be extended from time to time with the consent of the DIP ABL Agent (in its sole and absolute discretion), the "Other Milestones"), in each case on terms and conditions, and subject to documentation in form and substance, reasonably acceptable to the DIP ABL Agent in all respects.

(i) On the Petition Date, file a motion with the Court seeking (A) approval of bid procedures for the sale of all of the assets of the Debtors on a going-concern basis (other than the assets subject to the Required Store Closing Sales (as defined below) described below, the "Sale Assets") in accordance with the Sale Milestones set forth below (the "Bid Procedures"), which bid procedures shall specify that acceptable bids must (x) contemplate minimum net cash proceeds from the initial payment thereunder in an amount sufficient to repay in full the "Obligations" under the Prepetition ABL Agreement and DIP ABL Obligations (including cash collateralization of all obligations relating to the letters of credit and contingent exposure) and (y) be on terms and conditions acceptable to the

DIP ABL Agent, and (B) approval of the sale of the Sale Assets. Each of such motions to be in form and substance satisfactory to the DIP ABL Agent.

(ii) On or before August 30, 2024, obtain an order of the Court approving Bid Procedures, such order to be in form and substance reasonably satisfactory to the DIP ABL Agent.

(c) Achieve each of the following milestones (as the same may be extended from time to time with the consent of the DIP ABL Agent (in its sole and absolute discretion), the "Sale Milestones"), in each case on terms and conditions, and subject to documentation in form and substance, reasonably acceptable to the DIP ABL Agent in all respects.

(i) On or before August 26, 2024, unless waived by the DIP ABL Agent, enter into a stalking horse agreement, in form and substance satisfactory to the DIP ABL Agent, which shall, among other things, (A) contemplate the sale of the Sale Assets on a going-concern basis and which shall contemplate minimum net cash proceeds in an amount sufficient to repay in full, in combination with the net cash proceeds from the Real Estate Transaction (defined below), the "Obligations" under the Prepetition ABL Agreement and DIP ABL Obligations (including cash collateralization of all letters of credit and contingent exposure) and (B) not be subject to any financing contingency or any other contingencies not approved by the DIP ABL Agent, and the DIP ABL Agent shall be reasonably satisfied that such sale shall be consummated not later than September 30, 2024 (collectively, the "Stalking Horse Agreement").

(ii) If the Debtors have not entered into a Stalking Horse Agreement on or before August 26, 2024, or upon any Event of Default, the Debtors shall, on or before August 27, 2024, file a notice on the docket to notice the commencement of a full wind-down and liquidation of the Debtors' business (the "Liquidation Pivot"), and in which case, the Sale Milestones in clauses (iii) through (vii) below shall no longer apply and, instead, the following shall apply (the "Liquidation Pivot Milestones"):

1. In the event of a Liquidation Pivot, the Debtors shall solicit liquidation bids (on a fee or equity basis) (the "Liquidation Bids") for the commencement of a full wind-down and liquidation of the Debtors' business within one business day of the Liquidation Pivot, which date shall be August 27, 2024 in the event the Liquidation Pivot results from the Debtors' failure to enter into a Stalking Horse Agreement on or before August 26, 2024;

2. In the event of a Liquidation Pivot, the Debtors shall, within two (2) business days of soliciting the Liquidation Bids, which date shall be August 29, 2024 in the event the Liquidation Pivot results from the Debtors' failure to enter into a Stalking Horse

Agreement on or before August 26, 2024, select the highest or otherwise best Liquidation Bid (with the consent of the DIP ABL Agent, which consent shall not be unreasonably withheld), and, provided that the winning bid is not the Hilco Agreement (as defined below), file an emergency motion with the Court seeking approval of the winning Liquidation Bid and the commencement of the full wind-down and liquidation of the Debtors' business.

(iii) On or before August 30, 2024, obtain an order of the Court approving the Stalking Horse Agreement, such order to be in form and substance satisfactory to the DIP ABL Agent.

(iv) On or before September 9, 2024, receive going concern bids for the sale of the Sale Assets, and determine which bids shall be acceptable to the Debtors and the DIP ABL Agent, each of which shall, among other things (i) provide for minimum net cash proceeds in an amount sufficient to repay in full, in combination with the net cash proceeds from the Real Estate Transaction, the "Obligations" under the Prepetition ABL Agreement and DIP ABL Obligations (including cash collateralization of all letters of credit and contingent exposure) and (ii) otherwise be in form and substance acceptable to the DIP ABL Agent.

(v) On or before September 12, 2024, hold an auction for the sale of the Sale Assets on a going concern basis and declare a winning bidder or bidders thereof, which shall (i) provide for minimum net cash proceeds in an amount sufficient to repay in full, in combination with the net cash proceeds from the Real Estate Transaction, the "Obligations" under the Prepetition ABL Agreement and DIP ABL Obligations (including cash collateralization of all letters of credit and contingent exposure) and (ii) otherwise be in form and substance acceptable to DIP ABL Agent (collectively, the "Winning Bid").

(vi) On or before September 16, 2024, obtain an order of the Court, in form and substance satisfactory to the DIP ABL Agent, approving the sale of the Sale Assets pursuant to the Winning Bid.

(vii) On or before September 30, 2024, consummate the sale of the Sale Assets, with sufficient net cash proceeds in an amount sufficient to repay in full, in combination with the net cash proceeds from the Real Estate Transaction, the "Obligations" under the Prepetition ABL Agreement and DIP ABL Obligations (and result in sufficient cash proceeds to permit the cash collateralization of all letters of credit and contingent exposure on or before October 18, 2024) (an "Acceptable Sale").

(d) The Debtors shall achieve each of the following milestones ((as the same may be extended from time to time with the consent of the DIP ABL Agent (in its sole and absolute discretion), the "Required Store Closure 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, acceptable to the DIP ABL Agent in all respects:

(i) Prior to the Petition Date, the Debtors shall have commenced, and shall thereafter pursue, the Required Store Closing Sales (as defined below).

(ii) On or before August 14, 2024, the Debtors shall have obtained an order from the Court to assume the agency agreement, executed on August 8, 2024, between the Debtors and Hilco Merchant Resources, LLC ("Hilco" and, such agreement, the "Hilco Agreement"), which provides for Hilco to serve as the Debtors' agent in conducting liquidation sales at 94 of the Debtors' stores (the closing of such stores, the "Required Store Closing Sales").

(iii) On or before September 28, 2024, the Debtors shall have completed the Required Store Closing Sales, pursuant to the terms of the Hilco Agreement or, in the event of any conflict of terms, the final Court order approving the assumption of the Hilco Agreement.

(iv) If the Liquidation Pivot has occurred, on or before ninety-three (93) days from the Liquidation Pivot, which date shall be November 30, 2024 in the event the Liquidation Pivot results from the Debtors' failure to enter into a Stalking Horse Agreement on or before August 26, 2024, the Debtors shall have completed the closing of all remaining stores of the Debtors' business other than those stores referenced in clause (d)(ii) above.

(e) The Debtors shall achieve each of the following milestones ((as the same may be extended from time to time with the consent of the DIP ABL Agent (in its sole and absolute discretion), the "Real Estate 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, acceptable to the DIP ABL Agent in all respects:

(i) On or prior to September 7, 2024, the Debtors shall have entered into a binding purchase and sale agreement, or other similar binding agreement, with respect to the sale by the Debtors of the Owned Real Estate (as defined in the DIP ABL Agreement), which shall be in form and substance acceptable to the DIP ABL Agent (the "Real Estate Transaction").

(ii) On or prior to September 7, 2024, the Debtors shall have filed a motion (in form and substance acceptable to the DIP ABL Agent), seeking approval of the Real Estate Transaction;

(iii) On or prior to September 16, 2024, the Debtors shall have obtained an order of the Court approving the Real Estate Transaction, such order to be in form and substance acceptable to the DIP ABL Agent;

(iv) On or prior to September 30, 2024, the Debtors shall consummate the Real Estate Transaction.

The Debtors shall provide the DIP ABL Agent with any information or materials reasonably requested by the DIP ABL Agent in connection with the Debtors' progress on achieving any Case Milestone, subject to all applicable privileges and any confidentiality restrictions with third parties.