Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

x **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended May 4, 2019

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission file number 0-23071

THE CHILDREN'S PLACE, INC.

(Exact name of registrant as specified in its charter)

Delaware	**31-1241495**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification Number)
500 Plaza Drive	
Secaucus, New Jersey	**07094**
(Address of Principal Executive Offices)	(Zip Code)

(201) 558-2400
(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (Section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer", "accelerated filer", "smaller reporting company", and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one).

Large accelerated filer x	Accelerated filer o
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o
	Emerging growth company o

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes o No x

The number of shares outstanding of the registrant's common stock with a par value of $0.10 per share, as of May 27, 2019 was 15,847,270 shares.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES

QUARTERLY REPORT ON FORM 10-Q

FOR THE PERIOD ENDED MAY 4, 2019

TABLE OF CONTENTS

Table of Contents

PART I. FINANCIAL INFORMATION

Item 1. CONSOLIDATED FINANCIAL STATEMENTS

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

	May 4, 2019	February 2, 2019	May 5, 2018
	(unaudited)		(unaudited)
		(in thousands, except par value)	
ASSETS			
Current assets:			
Cash and cash equivalents	$ 66,111	$ 69,136	$ 90,121
Accounts receivable	39,562	35,123	31,960
Inventories	341,174	303,466	334,680
Prepaid expenses and other current assets	27,156	27,670	69,569
Total current assets	474,003	435,395	526,330
Long-term assets:			
Property and equipment, net	249,836	260,357	260,762
Right-of-use assets	458,702	—	—
Tradenames, net	73,656	—	—
Deferred income taxes	15,106	17,750	9,986
Other assets	14,651	13,544	13,849
Total assets	$ 1,285,954	$ 727,046	$ 810,927
LIABILITIES AND STOCKHOLDERS' EQUITY			
LIABILITIES:			
Current liabilities:			
Revolving loan	$ 153,072	$ 48,861	$ 46,800
Accounts payable	205,643	194,786	219,488
Current lease liabilities	133,783	—	—
Income taxes payable	2,452	997	1,326
Accrued expenses and other current liabilities	105,252	86,755	97,487
Total current liabilities	600,202	331,399	365,101
Long-term liabilities:			
Deferred rent liabilities	—	44,329	49,019
Long-term lease liabilities	367,307	—	—
Other tax liabilities	5,025	5,080	3,914
Income taxes payable	18,939	18,939	34,598
Other long-term liabilities	14,107	12,862	15,158
Total liabilities	1,005,580	412,609	467,790
COMMITMENTS AND CONTINGENCIES			
STOCKHOLDERS' EQUITY:			
Preferred stock, $1.00 par value, 1,000 shares authorized, 0 shares issued and outstanding	—	—	—
Common stock, $0.10 par value, 100,000 shares authorized; 15,915, 15,873 and 17,409 issued; 15,867, 15,827 and 16,605 outstanding	1,592	1,588	1,741
Additional paid-in capital	149,435	146,991	242,675
Treasury stock, at cost (48, 47 and 804 shares)	(2,747)	(2,685)	(102,498)
Deferred compensation	2,747	2,685	2,498
Accumulated other comprehensive loss	(15,542)	(14,934)	(14,010)
Retained earnings	144,889	180,792	212,731
Total stockholders' equity	280,374	314,437	343,137
Total liabilities and stockholders' equity	$ 1,285,954	$ 727,046	$ 810,927

See accompanying notes to these consolidated financial statements.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	Thirteen Weeks Ended	
	May 4, 2019	May 5, 2018
	(In thousands, except earnings per share)	
Net sales	$ 412,382	$ 436,314
Cost of sales (exclusive of depreciation and amortization)	260,406	276,122
Gross profit	151,976	160,192
Selling, general, and administrative expenses	128,006	118,471
Depreciation and amortization	18,584	17,406
Asset impairment charges	348	1,257
Operating income	5,038	23,058
Interest expense	(1,799)	(663)
Interest income	88	366
Income before provision (benefit) for income taxes	3,327	22,761
Provision (benefit) for income taxes	(1,163)	(8,776)
Net income	$ 4,490	$ 31,537
Earnings per common share		
Basic	$ 0.28	$ 1.85
Diluted	$ 0.28	$ 1.78
Weighted average common shares outstanding		
Basic	15,847	17,002
Diluted	16,107	17,734
Cash dividends declared per common share	$ 0.56	$ 0.50

See accompanying notes to these consolidated financial statements.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited)

	Thirteen Weeks Ended	
	May 4, 2019	May 5, 2018
	(In thousands)	
Net income	$ 4,490	$ 31,537
Other comprehensive income:		
Foreign currency translation adjustment	(683)	(1,206)
Change in fair value of cash flow hedges, net of income taxes	75	27
Total comprehensive income	$ 3,882	$ 30,358

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(Unaudited)

(in thousands, except dividends per share)	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Deferred Compensation	Retained Earnings	Accumulated Other Comprehensive Loss	Treasury Stock Shares	Treasury Stock Value	Total Stockholders' Equity
BALANCE, February 3, 2018	17,257	$ 1,726	$ 258,501	$ 2,436	$ 226,303	$ (12,831)	(46)	($2,436)	$ 473,699
Vesting of stock awards	458	46	(70)						(24)
Stock-based compensation			8,801						8,801
Capitalized stock-based compensation			85						85
Purchase and retirement of shares	(306)	(31)	(25,000)		(37,217)		(757)	(100,000)	(162,248)
Dividends declared ($0.50 per share)					(8,409)				(8,409)
Unvested dividends			358		(358)				—
ASC Topic 606 Adjustment					875				875
Change in cumulative translation adjustment						(1,206)			(1,206)
Change in fair value of cash flow hedges, net of income taxes						27			27
Deferral of common stock into deferred compensation plan				62			—	(62)	—
Net income					31,537				31,537
BALANCE, May 5, 2018	17,409	$ 1,741	$ 242,675	$ 2,498	$ 212,731	$ (14,010)	(803)	$ (102,498)	$ 343,137
BALANCE, February 2, 2019	15,873	$ 1,588	$ 146,991	$ 2,685	$ 180,792	$ (14,934)	(47)	($2,685)	$ 314,437
Vesting of stock awards	403	40	(4)						36
Stock-based compensation			7,759						7,759
Purchase and retirement of shares	(363)	(36)	(5,526)		(29,581)				(35,143)
Dividends declared ($0.56 per share)					(8,930)				(8,930)
Unvested dividends			215		(215)				—
ASC Topic 842 Adjustment					(1,667)				(1,667)
Change in cumulative translation adjustment						(683)			(683)
Change in fair value of cash flow hedges, net of income taxes						75			75
Deferral of common stock into deferred compensation plan				62			(1)	(62)	—
Net income					4,490				4,490
BALANCE, May 4, 2019	15,913	$ 1,592	$ 149,435	$ 2,747	$ 144,889	$ (15,542)	(48)	$ (2,747)	$ 280,374

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Thirteen Weeks Ended	
	May 4, 2019	May 5, 2018
	(In thousands)	
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	$ 4,490	$ 31,537
Reconciliation of net income to net cash provided by (used in) operating activities:		
Non-cash portion of operating lease expense	38,731	—
Depreciation and amortization	18,584	17,406
Stock-based compensation	7,759	8,797
Deferred taxes	3,159	2,573
Asset impairment charges	348	1,257
Other	69	91
Changes in operating assets and liabilities:		
Inventories	(38,323)	(11,070)
Accounts receivable	(4,468)	(5,896)
Prepaid expenses and other current assets	4,840	140
Other non-current assets	3,394	(980)
Income taxes payable, net of prepayments	(2,955)	(16,436)
Accounts payable and other current liabilities	28,699	(40,283)
Other long-term liabilities	(43,142)	119
Net cash provided by (used in) operating activities	21,185	(12,745)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Capital expenditures	(11,009)	(11,065)
Acquisition of assets	(76,000)	—
Proceeds from sale of short-term investments	—	15,000
Change in deferred compensation plan	517	(333)
Net cash provided by (used in) investing activities	(86,492)	3,602
CASH FLOWS FROM FINANCING ACTIVITIES:		
Repurchase of common stock, including shares surrendered for tax withholdings and transaction costs	(33,319)	(162,248)
Payment of dividends	(8,930)	(8,409)
Borrowings under revolving loan	306,279	301,340
Repayments under revolving loan	(202,068)	(276,000)
Net cash provided by (used in) financing activities	61,962	(145,317)
Effect of exchange rate changes on cash and cash equivalents	320	62
Net decrease in cash and cash equivalents	(3,025)	(154,398)
Cash and cash equivalents, beginning of period	69,136	244,519
Cash and cash equivalents, end of period	$ 66,111	$ 90,121

See accompanying notes to these consolidated financial statements.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Thirteen Weeks Ended	
	May 4, 2019	May 5, 2018
	(In thousands)	
OTHER CASH FLOW INFORMATION:		
Net cash paid (refunded) during the period for income taxes	$ (1,379)	$ 5,572
Cash paid during the period for interest	1,537	595
Increase (decrease) in accrued purchases of property and equipment	(2,019)	1,042

See accompanying notes to these consolidated financial statements.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. BASIS OF PRESENTATION

Description of Business

The Children's Place, Inc. and subsidiaries (the "Company") is the largest pure-play children's specialty apparel retailer in North America. The Company provides apparel, footwear, accessories, and other items for children. The Company designs, contracts to manufacture, sells at retail and wholesale, and licenses to sell, trend right, high-quality merchandise at value prices, the substantial majority of which is under its proprietary "The Children's Place", "Place", and "Baby Place" brand names.

The Company classifies its business into two segments: The Children's Place U.S. and The Children's Place International. Included in The Children's Place U.S. segment are the Company's U.S. and Puerto Rico-based stores and revenue from its U.S.- based wholesale business. Included in The Children's Place International segment are its Canadian-based stores, revenue from the Company's Canada wholesale business, as well as revenue from international franchisees. Each segment includes an e-commerce business located at *www.childrensplace.com.*

Interim Financial Statements

The accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP") for interim financial information and the rules and regulations of the Securities and Exchange Commission (the "SEC"). Accordingly, certain information and footnote disclosures normally included in the annual consolidated financial statements prepared in accordance with U.S. GAAP have been condensed or omitted.

In the opinion of management, the accompanying unaudited consolidated financial statements contain all adjustments necessary to present fairly the consolidated financial position of The Children's Place, Inc. (the "Company") as of May 4, 2019 and May 5, 2018 and the results of its consolidated operations for the thirteen weeks ended May 4, 2019 and May 5, 2018 and cash flows for the thirteen weeks ended May 4, 2019 and May 5, 2018 and stockholders' equity for the thirteen weeks ended May 4, 2019 and May 5, 2018. The consolidated financial position as of February 2, 2019 was derived from audited financial statements. Due to the seasonal nature of the Company's business, the results of operations for the thirteen weeks ended May 4, 2019 and May 5, 2018 are not necessarily indicative of operating results for a full fiscal year. These consolidated financial statements should be read in conjunction with the consolidated financial statements included in the Company's Annual Report on Form 10-K for the fiscal year ended February 2, 2019.

Terms that are commonly used in the Company's notes to consolidated financial statements are defined as follows:

- First Quarter 2019 — The thirteen weeks ended May 4, 2019
- First Quarter 2018 — The thirteen weeks ended May 5, 2018
- FASB — Financial Accounting Standards Board
- SEC — U.S. Securities and Exchange Commission
- U.S. GAAP — Generally Accepted Accounting Principles in the United States
- FASB ASC — FASB Accounting Standards Codification, which serves as the source for authoritative U.S. GAAP, except that rules and interpretive releases by the SEC are also sources of authoritative U.S. GAAP for SEC registrants

Consolidation

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. Intercompany balances and transactions have been eliminated. FASB ASC 810--*Consolidation* is considered when determining whether an entity is subject to consolidation.

Fiscal Year

The Company's fiscal year is a 52-week or 53-week period ending on the Saturday on or nearest to January 31.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and amounts of revenues and expenses reported during the period. Actual results could differ from the assumptions used and estimates made by management, which could have a material impact on the Company's financial position

or results of operations. Significant estimates inherent in the preparation of the consolidated financial statements include: reserves for the realizability of inventory; reserves for litigation and other contingencies; useful lives and impairments of long-lived assets; fair value measurements; accounting for income taxes and related uncertain tax positions; insurance reserves; valuation of stock-based compensation awards and related estimated forfeiture rates, among others.

Reclassifications

Certain reclassifications have been made to prior period financial statements to conform to the current period presentation.

Leases

The Company adopted Accounting Standards Update No. 2016-02 "Leases" ("Topic 842") as of the beginning of fiscal 2019 using the modified retrospective transition method. Topic 842 requires that all leases greater than 12 months be recorded on the balance sheet as a right-of-use asset with a corresponding liability.

See Note 3 "*Leases*" for further details on the Company's adoption of Topic 842.

Inventories

Inventories, which consist primarily of finished goods, are stated at the lower of cost or net realizable value, with cost determined on an average cost basis. The Company capitalizes certain supply chain costs in inventory, and these costs are reflected within cost of sales as the inventories are sold. Inventory shrinkage is estimated in interim periods based upon the historical results of physical inventory counts in the context of current year facts and circumstances.

Impairment of Long-Lived Assets

The Company periodically reviews its long-lived assets when events indicate that their carrying value may not be recoverable. Such events include historical trends or projected trend of cash flow losses or a future expectation that the Company will sell or dispose of an asset significantly before the end of its previously estimated useful life. In reviewing for impairment, the Company groups its long-lived assets at the lowest possible level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities.

The Company reviews all stores that have reached comparable sales status, or sooner if circumstances should dictate, on at least an annual basis. The Company believes waiting this period of time allows a store to reach a maturity level where a more comprehensive analysis of financial performance can be performed. For each store that shows indications of operating losses, the Company projects future cash flows over the remaining life of the lease and compares the total undiscounted cash flows to the net book value of the related long-lived assets. If the undiscounted cash flows are less than the related net book value of the long-lived assets, they are written down to their fair market value. The Company primarily determines fair market value to be the discounted future cash flows directly associated with those assets. In evaluating future cash flows, the Company considers external and internal factors. External factors comprise the local environment in which the store resides, including mall traffic, competition and their effect on sales trends. Internal factors include the Company's ability to gauge the fashion taste of its customers, control variable costs such as cost of sales and payroll and, in certain cases, its ability to renegotiate lease costs.

Stock-based Compensation

The Company generally grants time vesting stock awards ("Deferred Awards") and performance-based stock awards ("Performance Awards") to employees at management levels. The Company also grants Deferred Awards to its non-employee directors. Deferred Awards are granted in the form of a defined number of restricted stock units that require each recipient to complete a service period. Deferred Awards generally vest ratably over three years, except for those granted to non-employee directors, which generally vest after one year. Performance Awards are granted in the form of restricted stock units which have performance criteria that must be achieved for the awards to vest (the "Target Shares") in addition to a service period requirement. For Performance Awards issued during fiscal 2016 and 2017 (the “2016 and 2017 Performance Awards”), an employee may earn from 0% to 200% of their Target Shares based on the achievement of cumulative adjusted earnings per share achieved for the three-year performance period, adjusted operating margin expansion achieved for the three-year performance period and adjusted return on invested capital ("adjusted ROIC") achieved as of the end of the performance period. The 2016 and 2017 Performance Awards cliff vest, if earned, after completion of the three-year performance period. The fair value of the 2016 and 2017 Performance Awards granted is based on the closing price of our common stock on the grant date. For Performance Awards issued during fiscal 2018 (the “2018 Performance Awards”), an employee may earn from 0% to 250% of their Target Shares based on cumulative adjusted earnings per share achieved for the three-year performance period, adjusted operating margin expansion achieved for the three-year performance period, adjusted ROIC achieved as of the end of the performance period and our adjusted ROIC relative to that of companies in our peer group as of the end of the performance period. The 2018 Performance Awards cliff vest, if earned, after completion of the three-year performance period. The fair value of the 2018 Performance Awards granted is based on the closing price of our common stock on the grant date.

Stock-based compensation expense is recognized ratably over the related service period reduced for estimated forfeitures of those awards not expected to vest due to employee turnover. Stock-based compensation expense, as it relates to Performance Awards, is also adjusted based on the Company's estimate of adjusted earnings per share and adjusted operating margin expansion and adjusted return on invested capital and ranking of our adjusted return on investment capital relative to that of companies in our peer group as they occur.

Deferred Compensation Plan

The Company has a deferred compensation plan (the "Deferred Compensation Plan"), which is a nonqualified plan, for eligible senior level employees. Under the plan, participants may elect to defer up to 80% of his or her base salary and/or up to 100% of his or her bonus to be earned for the year following the year in which the deferral election is made. The Deferred Compensation Plan also permits members of the Board of Directors to elect to defer payment of all or a portion of their retainer and other fees to be earned for the year following the year in which a deferral election is made. In addition, eligible employees and directors of the Company may also elect to defer payment of any shares of Company stock that is earned with respect to stock-based awards. Directors may elect to have all or a certain portion of their fees earned for their service on the Board invested in shares of the Company's common stock. Such elections are irrevocable. The Company is not required to contribute to the Deferred Compensation Plan, but at its sole discretion, can make additional contributions on behalf of the participants. Deferred amounts are not subject to forfeiture and are deemed invested among investment funds offered under the Deferred Compensation Plan, as directed by each participant. Payments of deferred amounts (as adjusted for earnings and losses) are payable following separation from service or at a date or dates elected by the participant at the time the deferral is elected. Payments of deferred amounts are generally made in either a lump sum or in annual installments over a period not exceeding 15 years. All deferred amounts are payable in the form in which they were made, except for board fees invested in shares of the Company's common stock, which will be settled in shares of Company common stock. Earlier distributions are not permitted except in the case of an unforeseen hardship.

The Company has established a rabbi trust that serves as an investment to shadow the Deferred Compensation Plan liability. The assets of the rabbi trust are general assets of the Company and as such, would be subject to the claims of creditors in the event of bankruptcy or insolvency. Investments of the rabbi trust consist of mutual funds and Company common stock. The Deferred Compensation Plan liability, excluding Company common stock, is included within other long-term liabilities and changes in the balance, except those relating to payments, are recognized as compensation expense within selling, general, and administrative expenses. The value of the mutual funds is included in other assets and related earnings and losses are recognized as investment income or loss, which is included within selling, general, and administrative expenses. Company stock deferrals are included within the equity section of the Company's consolidated balance sheet as treasury stock and as a deferred compensation liability. Deferred stock is recorded at fair market value at the time of deferral and any subsequent changes in fair market value are not recognized.

Fair Value Measurement and Financial Instruments

FASB ASC 820--*Fair Value Measurements and Disclosure* provides a single definition of fair value, together with a framework for measuring it, and requires additional disclosure about the use of fair value to measure assets and liabilities.

This topic defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and establishes a three-level hierarchy, which encourages an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels of the hierarchy are defined as follows:

- Level 1 - inputs to the valuation techniques that are quoted prices in active markets for identical assets or liabilities
- Level 2 - inputs to the valuation techniques that are other than quoted prices but are observable for the assets or liabilities, either directly or indirectly
- Level 3 - inputs to the valuation techniques that are unobservable for the assets or liabilities

The Company's cash and cash equivalents, assets of the Company's Deferred Compensation Plan, accounts receivable, accounts payable, current lease liabilities, and revolving loan are all short-term in nature. As such, their carrying amounts approximate fair value and fall within Level 1 of the fair value hierarchy. The Company stock that is included in the Deferred Compensation Plan is not subject to fair value measurement.

The Company's assets and liabilities include foreign exchange forward contracts that are measured at fair value using observable market inputs such as forward rates, the Company's credit risk, and our counterparties' credit risks. Based on these inputs, the Company's derivative assets and liabilities are classified within Level 2 of the valuation hierarchy.

The Company's assets measured at fair value on a nonrecurring basis include long-lived assets, such as intangible assets, fixed assets, and right-of-use assets. The Company reviews the carrying amounts of such assets when events indicate that their

carrying amounts may not be recoverable. Any resulting asset impairment would require that the asset be recorded at its fair value. The resulting fair value measurements of the assets are considered to fall within Level 3 of the fair value hierarchy.

Recently Issued Accounting Standards

Adopted in Fiscal 2019

In August 2017, the FASB issued guidance relating to the accounting for hedging activities. This guidance aims to better align an entity's risk management activities and financial reporting for hedging relationships through changes to both the designation and measurement guidance for qualifying hedging relationships and the presentation of hedge results. The amendments in the guidance expand and refine hedge accounting for both non-financial and financial risk components and align the recognition and presentation of the effects of the hedging instrument and the hedged item in the financial statements. We adopted this guidance in the First Quarter 2019. This adoption did not have a material impact on the Company's consolidated financial statements.

In February 2016, the FASB issued guidance relating to the accounting for leases. This guidance applies a right-of-use model that requires a lessee to record, for all leases with a lease term of more than 12 months, an asset representing its right to use the underlying asset for the lease term and a liability to make lease payments. The lease term is the noncancellable period of the lease, and includes both periods covered by an option to extend the lease, if the lessee is reasonably certain to exercise that option, and periods covered by an option to terminate the lease, if the lessee is reasonably certain not to exercise that termination option. We adopted this guidance in the First Quarter 2019 using the modified-retrospective method. Refer to Note 3, "Leases", for additional information.

To Be Adopted After Fiscal 2019

In August 2018, the FASB issued guidance related to the accounting for implementation costs incurred in a cloud computing arrangement that is a service contract. The guidance aims to align the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software and hosting arrangements that include an internal-use software license. The guidance is effective for annual reporting periods, and interim periods within those years, beginning after December 15, 2019. We do not expect the guidance to have a material impact on our consolidated financial statements.

In August 2018, the FASB issued guidance related to disclosure requirements for fair value measurement. The amendments modify current fair value measurement disclosure requirements by removing, adding, or modifying certain fair value measurement disclosures. The guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019, and early adoption is permitted. We plan to adopt the new disclosure requirements on a prospective basis beginning in the year of adoption. We do not expect the guidance to have a material impact on our consolidated financial statements.

2. REVENUES

Revenues are recognized when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services.

The following table presents our revenues disaggregated by geography:

	Thirteen Weeks Ended	
	May 4, 2019	May 5, 2018
Net sales:	(In thousands)	
South	$ 147,064	$ 153,764
Northeast	97,903	105,878
West	61,994	66,605
Midwest	54,648	57,501
International and other	50,773	52,566
Total net sales	$ 412,382	$ 436,314

The Company recognizes revenue, including shipping and handling fees billed to customers, upon purchase at the Company's retail stores or when received by the customer if the product was purchased via e-commerce, net of coupon redemptions and anticipated sales returns. The Company deferred approximately $5.1 million and $2.6 million as of May 4, 2019 and May 5, 2018, respectively, based upon estimated time of delivery, at which point control passes to the customer, and is recorded in accrued expenses and other current liabilities. Sales tax collected from customers is excluded from revenue.

For the sale of goods with a right of return, the Company recognizes revenue for the consideration it expects to be entitled to and calculates an allowance for estimated sales returns based upon the Company's sales return experience. Adjustments to the allowance for estimated sales returns in subsequent periods are generally not material based on historical data, thereby reducing the uncertainty inherent in such estimates. The allowance for estimated sales returns, which is recorded in accrued expenses and other current liabilities, was approximately $1.6 million and $1.3 million as of May 4, 2019 and May 5, 2018, respectively.

Our private label credit card is issued to our customers for use exclusively at The Children's Place stores and online at *www.childrensplace.com*, and credit is extended to such customers by a third-party financial institution on a non-recourse basis to us. The private label credit card includes multiple performance obligations, including marketing and promoting the program on behalf of the bank and the operation of the loyalty rewards program. Included in the agreement with the third-party financial institution was an upfront bonus paid to the Company. The upfront bonus is recognized as revenue and allocated between brand and reward obligations. As the license of the Company’s brand is the predominant item in the performance obligation, the amount allocated to the brand obligation is recognized on a straight-line basis over the initial term. The amount allocated to the reward obligation is recognized on a point-in-time basis as redemptions under the loyalty program occur.

In measuring revenue and determining the consideration the Company is entitled to as part of a contract with a customer, the Company takes into account the related elements of variable consideration, such as additional bonuses, including profit-sharing, over the life of the program. Similar to the upfront bonus, the usage-based royalties and bonuses are recognized as revenue and allocated between the brand and reward obligations. The amount allocated to the brand obligation is recognized on a straight-line basis over the initial term. The amount allocated to the reward obligation is recognized on a point-in-time basis as redemptions under the loyalty program occur. In addition, the annual profit-sharing amount is estimated and recognized quarterly within an annual period when earned. The additional bonuses are amortized over the contract term based on anticipated progress against future targets and level of risk associated with achieving the targets. The Company deferred approximately $0.5 million as of May 4, 2019 in relation to its private label credit card performance obligations.

The Company has a points-based customer loyalty program, in which customers earn points based on purchases and other promotional activities. These points can be redeemed for coupons to discount future purchases. A contract liability is estimated based on the standalone selling price of benefits earned by customers through the program and the related redemption experience under the program. The value of each point earned is recorded as deferred revenue and is included within accrued expenses and other current liabilities. The total contract liability related to this program was $3.8 million and $4.8 million as of May 4, 2019 and May 5, 2018, respectively.

The Company's policy with respect to gift cards is to record revenue as and when the gift cards are redeemed for merchandise. The Company recognizes gift card breakage income in proportion to the pattern of rights exercised by the customer when the Company expects to be entitled to breakage and the Company determines that it does not have a legal obligation to remit the value of the unredeemed gift card to the relevant jurisdiction as unclaimed or abandoned property and is recorded within net sales. Prior to their redemption, gift cards are recorded as a liability, included within accrued expenses and other current liabilities. The total contract liability related to gift cards issued was $17.0 million and $15.9 million as of May 4, 2019 and May 5, 2018, respectively. The liability is estimated based on expected breakage that considers historical patterns of redemption. The following table provides the reconciliation of the contract liability related to gift cards:

	Contract Liability
	(In thousands)
Balance at February 2, 2019	$ 17,867
Gift cards sold	7,139
Gift cards redeemed	(7,142)
Gift card breakage	(831)
Balance at May 4, 2019	$ 17,033

The Company has an international expansion program through territorial agreements with franchisees. The Company generates revenues from the franchisees from the sale of product and, in certain cases, sales royalties. The Company records net sales and cost of goods sold on the sale of product to franchisees when the franchisee takes ownership of the product. The Company records net sales for royalties when the applicable franchisee sells the product to their customers. Under certain agreements, the Company receives a fee from each franchisee for exclusive territorial rights. The Company records this territorial fee as deferred revenue and amortizes the fee into gross sales over the life of the territorial agreement.

3. LEASES

Adoption of ASC Topic 842, "Leases"

On February 3, 2019, the Company adopted ASC Topic 842 "Leases" ("Topic 842") using the modified retrospective method. Results for reporting periods beginning in fiscal 2019 are presented under Topic 842, while prior period amounts are not adjusted and continue to be reported in accordance with ASC Topic 840" Leases" ("Topic 840").

On February 3, 2019, the Company recognized a cumulative-effect charge of $1.7 million, net of tax, to the opening balance of retained earnings, which represents the initial impairment of right-of-use assets related to retail locations.

For operating leases, the lease liability is initially and subsequently measured at the present value of the unpaid lease payments at the lease commencement date. The right-of-use asset is initially and subsequently measured throughout the lease term at the carrying amount of the lease liability, plus initial direct costs, less any accrued lease payments and unamortized lease incentives. For finance leases, the right-of-use asset is initially measured at cost and subsequently amortized using the straight-line method generally from the lease commencement date to the earlier of the end of its useful life or the end of the lease term.

The Company has elected the package of practical expedients permitted under the transition guidance within the new standard. Accordingly, we have adopted these practical expedients and did not reassess: (1) whether an expired or existing contract is a lease or contains an embedded lease; (2) lease classification of an expired or existing lease; (3) capitalization of initial direct costs for an expired or existing lease.

The Company has made an accounting policy election by class of underlying asset to not apply the recognition requirements of Topic 842 to leases with an initial term of 12 months or less. Leases with an initial lease term of 12 months or less are not recorded on the balance sheet. The Company recognizes lease expense for these leases on a straight-line basis over the lease term.

In certain leases, the Company has the right to exercise lease renewal options. Renewal option periods are included in the measurement of lease right-of-use assets and lease liabilities where the exercise is reasonably certain to occur.

The Company has lease agreements with lease and non-lease components. The Company elected a policy to account for lease and non-lease components as a single component for all asset classes.

The discount rate is the rate implicit in the lease unless that rate cannot be readily determined. In that case, the Company is required to use its incremental borrowing rate. The discount rate for a lease is determined based on the information available at the later of adoption of Topic 842 or at lease commencement. In general, the Company accounts for the underlying leased asset and applies a discount rate at the lease level. However, there are certain non-real estate leases for which the Company utilizes the portfolio method by aggregating similar leased assets based on the underlying lease term.

As of May 4, 2019, the Company's finance leases were not material to the consolidated balance sheets, consolidated statements of operations, or consolidated statement of cash flows.

We have certain lease agreements structured with both a fixed base rent and a contingent rent based on a percentage of sales over contractual levels, others with only contingent rent based on a percentage of sales and some with a fixed base rent adjusted periodically for inflation or changes in fair market value of the underlying real estate. Contingent rent is recognized as sales occur. Our lease agreements do not contain any material residual value guarantees or material restrictive covenants.

We have operating leases for retail stores, corporate offices, distribution facilities, and certain equipment. Our leases have remaining lease terms of less than 1 year up to 10 years, some of which may include options to extend the leases for up to five years, and some of which may include options to early terminate the lease.

The following components of lease expense are included in the Company's consolidated statement of operations:

	May 4, 2019 (in thousands)
Operating lease cost	$ 38,731
Variable lease cost[1]	$ 15,937
Total lease cost	$ 54,668

[1]Includes short term leases with lease periods of less than 12 months.

As of May 4, 2019, the weighted-average remaining operating lease term was 4.8 years and the weighted-average discount rate for operating leases was 5.0%.

Cash paid for amounts included in the measurement of operating lease liabilities in the First Quarter 2019 was approximately $39.8 million.

Right-of-use assets obtained in exchange for new operating lease liabilities was approximately $33.2 million.

As of May 4, 2019, the maturities of lease liabilities were as follows:

	May 4, 2019 Operating Leases (in thousands)
Remainder of 2019	$ 117,624
2020	133,783
2021	102,066
2022	70,062
2023	44,854
Thereafter	80,814
Total lease payments	$ 549,203
Less: imputed interest	$ (48,113)
Present value of lease liabilities	$ 501,090

Future minimum annual lease payments under the Company's operating leases at February 2, 2019 were as follows:

	Minimum Operating Lease Payments (In thousands)
2019	$ 143,601
2020	117,037
2021	86,788
2022	57,734
2023	32,218
Thereafter	50,263
Total minimum lease payments	$ 487,641

4. INTANGIBLE ASSETS

During the First Quarter 2019, the Company acquired certain intellectual property and related assets (the “Gymboree Assets”) of Gymboree Group, Inc. and related entities, which included the worldwide rights to the names “Gymboree” and “Crazy 8” and other intellectual property, including trademarks, domain names, copyrights, and customer databases. These intangible assets, inclusive of acquisition costs, are recorded in the long-term assets section of the consolidated balance sheets.

The Company's intangible assets were as follows:

		May 4, 2019		
	Useful life	Gross amount	Accumulated amortization	Net amount
		(in thousands)		
Gymboree tradename[1]	Indefinite	$ 69,725	$ —	$ 69,725
Crazy 8 tradename[1]	5 years	4,000	69	3,931
Customer databases[2]	3 years	3,000	83	2,917
Total intangibles, net		$ 76,725	$ 152	$ 76,573

(1) Included within Tradenames, net in the consolidated balance sheets.
(2) Included within Other assets in the consolidated balance sheets.

5. STOCKHOLDERS’ EQUITY

Share Repurchase Programs

The Company's Board of Directors has authorized the following share repurchase programs which were active during the First Quarter 2019 and First Quarter 2018: (1) $250 million in March 2017 (the "2017 Share Repurchase Program") and (2) $250 million in March 2018 (the "2018 Share Repurchase Program"). The 2017 Share Repurchase Programs has been completed. At May 4, 2019, there was approximately $206 million remaining on the 2018 Share Repurchase Program. Under these programs, the Company may repurchase shares in the open market at current market prices at the time of purchase or in privately negotiated transactions. The timing and actual number of shares repurchased under a program will depend on a variety of factors including price, corporate and regulatory requirements, and other market and business conditions. The Company may suspend or discontinue a program at any time, and may thereafter reinstitute purchases, all without prior announcement.

Pursuant to the Company's practice, including due to restrictions imposed by the Company's insider trading policy during black-out periods, the Company withholds and surrenders shares of vesting stock awards and makes payments to taxing authorities as required by law to satisfy the withholding tax requirements of all equity award recipients. The Company's payment of the withholding taxes in exchange for the surrendered shares constitutes a purchase of its common stock. The Company also acquires shares of its common stock in conjunction with liabilities owed under the Company's Deferred Compensation Plan, which are held in treasury.

The following table summarizes the Company's share repurchases:

	Thirteen Weeks Ended			
	May 4, 2019		May 5, 2018	
	Shares	Value	Shares	Value
	(In thousands)			
Shares repurchases related to:				
2017 Share Repurchase Program [1]	—	$ —	1,034	$ 137,248
2018 Share Repurchase Program[2][3]	344.3	$ 33,319	—	$ —
Shares acquired and held in treasury under Deferred Compensation Plan	0.7	$ 62	0.4	$ 62

(1) Inclusive of 0.3 million shares and $37.2 million in the First Quarter 2018 withheld to cover taxes in conjunction with the vesting of stock awards.
(2) Inclusive of 0.2 million shares for approximately $15.3 million in the First Quarter 2019 withheld to cover taxes in conjunction with the vesting of stock awards.
(3) Subsequent to May 4, 2019 and through May 27, 2019, the Company repurchased approximately 0.1 million shares for approximately $10.4 million, inclusive of 40 thousand shares for approximately $4.5 million withheld to cover taxes in conjunction with the vesting of stock awards.

In accordance with the FASB ASC 505--*Equity*, the par value of the shares retired is charged against common stock and the remaining purchase price is allocated between additional paid-in capital and retained earnings. The portion charged against additional paid-in capital is done using a pro-rata allocation based on total shares outstanding. Related to all shares retired during the First Quarter 2019 and the First Quarter 2018, approximately $29.6 million and $37.2 million, respectively, were charged to retained earnings.

Dividends

The First Quarter 2019 dividend of $0.56 per share was paid on April 26, 2019 to shareholders of record on the close of business on April 15, 2019. During the First Quarter 2019, $9.1 million was charged to retained earnings, of which $8.9 million related to cash dividends paid and $0.2 million related to dividend share equivalents on unvested Deferred Awards and Performance Awards. During the First Quarter 2018, $8.8 million was charged to retained earnings, of which $8.4 million related to cash dividends paid and $0.4 million related to dividend share equivalents on unvested Deferred Awards and Performance Awards.

The Company's Board of Directors declared a quarterly cash dividend of $0.56 per share to be paid June 28, 2019 to shareholders of record on the close of business on June 18, 2019. Future declarations of quarterly dividends and the establishment of future record and payment dates are subject to approval by the Company's Board of Directors based on a number of factors, including business and market conditions, the Company's future financial performance, and other investment priorities.

6. STOCK-BASED COMPENSATION

The following table summarizes the Company's stock-based compensation expense:

	Thirteen Weeks Ended	
	May 4, 2019	May 5, 2018
	(In thousands)	
Deferred Awards	$ 4,150	$ 3,813
Performance Awards	3,609	4,984
Total stock-based compensation expense [1]	$ 7,759	$ 8,797

[1] During the First Quarter 2019 and the First Quarter 2018, approximately $1.0 million and $1.0 million, respectively, were included within cost of sales. All other stock-based compensation is included in selling, general, and administrative expenses.

The Company recognized a tax benefit related to stock-based compensation expense of approximately $2.1 million and $2.3 million during the First Quarter 2019 and the First Quarter 2018, respectively.

Changes in the Company's Unvested Stock Awards during the First Quarter 2019

Deferred Awards

	Number of Shares	Weighted Average Grant Date Fair Value
	(In thousands)	
Unvested Deferred Awards, beginning of period	299	$ 99.98
Granted	97	98.89
Vested	(54)	117.34
Forfeited	(6)	112.34
Unvested Deferred Awards, end of period	336	$ 96.66

Total unrecognized stock-based compensation expense related to unvested Deferred Awards approximated $22.2 million as of May 4, 2019, which will be recognized over a weighted average period of approximately 1.5 years.

Performance Awards

	Number of Shares [1]	Weighted Average Grant Date Fair Value
	(In thousands)	
Unvested Performance Awards, beginning of period	352	$ 90.66
Shares earned in excess of target	181	75.83
Vested shares, including shares vested in excess of target	(349)	75.83
Forfeited	(1)	126.47
Unvested Performance Awards, end of period	183	$ 104.17

[1] For those awards in which the performance period is complete, the number of unvested shares is based on actual shares that will vest upon completion of the service period.

For those awards in which the performance period is not yet complete, the number of unvested shares in the table above is based on the participants earning their Target Shares at 100%. However, the cumulative expense recognized reflects changes in estimated adjusted earnings per share, adjusted operating margin expansion, and adjusted return on invested capital as they occur. Total unrecognized stock-based compensation expense related to unvested Performance Awards approximated $6.1 million as of May 4, 2019, which will be recognized over a weighted average period of approximately 1.2 years.

7. EARNINGS PER COMMON SHARE

The following table reconciles net income and share amounts utilized to calculate basic and diluted earnings per common share:

	Thirteen Weeks Ended	
	May 4, 2019	May 5, 2018
	(In thousands)	
Net income	$ 4,490	$ 31,537
Basic weighted average common shares	15,847	17,002
Dilutive effect of stock awards	260	732
Diluted weighted average common shares	16,107	17,734

8. PROPERTY AND EQUIPMENT

Property and equipment, net consist of the following:

	May 4, 2019	February 2, 2019	May 5, 2018
	(In thousands)		
Property and equipment:			
Land and land improvements	$ 3,403	$ 3,403	$ 3,403
Building and improvements	35,568	35,568	35,548
Material handling equipment	51,934	51,934	50,102
Leasehold improvements	299,735	301,233	309,365
Store fixtures and equipment	270,755	273,430	265,770
Capitalized software	256,343	254,064	239,770
Construction in progress	20,568	14,823	20,980
	938,306	934,455	924,938
Accumulated depreciation and amortization	(688,470)	(674,098)	(664,176)
Property and equipment, net	$ 249,836	$ 260,357	$ 260,762

At May 4, 2019, the Company performed impairment testing on 971 stores with a total net book value of approximately $72.0 million. During the First Quarter 2019, the Company recorded asset impairment charges of $0.3 million primarily for five stores, all of which were fully impaired.

At May 5, 2018, the Company performed impairment testing on 1,002 stores with a total net book value of approximately $79.4 million. During the First Quarter 2018, the Company recorded asset impairment charges of $0.3 million for two stores, both of which were fully impaired. Additionally, during the First Quarter 2018, the Company recorded asset impairment charges of $1.0 million related to the write-down of information technology systems.

9. CREDIT FACILITY

The Company and certain of its domestic subsidiaries maintain a credit agreement (the “Credit Agreement”) with Wells Fargo Bank, National Association (“Wells Fargo”), Bank of America, N.A., HSBC Business Credit (USA) Inc., and JPMorgan Chase Bank, N.A., as lenders (collectively, the “Lenders”) and Wells Fargo, as Administrative Agent, Collateral Agent and Swing Line Lender. The following discussion of the Company's Credit Agreement is as of May 4, 2019. See Note 14 "*Subsequent Events*" for information concerning an amendment to the Credit Agreement.

The Credit Agreement consists of a $250 million asset based revolving credit facility, with a $50 million sublimit for standby and documentary letters of credit and an uncommitted accordion feature that could provide up to $50 million of additional availability. Revolving credit loans outstanding under the Credit Agreement bear interest, at the Company’s option, at:

(i) the prime rate, plus a margin of 0.50% to 0.75% based on the amount of the Company’s average excess availability under the facility; or
(ii) the London InterBank Offered Rate, or “LIBOR”, for an interest period of one, two, three, or six months, as selected by the Company, plus a margin of 1.25% to 1.50% based on the amount of the Company’s average excess availability under the facility.

The Company is charged a fee of 0.25% on the unused portion of the commitments. Letter of credit fees range from 0.625% to 0.75% for commercial letters of credit and from 0.75% to 1.00% for standby letters of credit. Letter of credit fees are determined based on the amount of the Company's average excess availability under the facility. The amount available for loans and letters of credit under the Credit Agreement is determined by a borrowing base consisting of certain credit card receivables, certain trade and franchise receivables, certain inventory, and the fair market value of certain real estate, subject to certain reserves.

The outstanding obligations under the Credit Agreement may be accelerated upon the occurrence of certain events, including, among others, non-payment, breach of covenants, the institution of insolvency proceedings, defaults under other material indebtedness and a change of control, subject, in the case of certain defaults, to the expiration of applicable grace periods. The Company is not subject to any early termination fees.

The Credit Agreement contains covenants which include conditions on stock buybacks and the payment of cash dividends or similar payments. Credit extended under the Credit Agreement is secured by a first priority security interest in substantially all of the Company's U.S. assets excluding intellectual property, software, equipment, and fixtures.

The Company has capitalized an aggregate of approximately $4.3 million in deferred financing costs related to the Credit Agreement. The unamortized balance of deferred financing costs at May 4, 2019 was approximately $0.4 million. Unamortized deferred financing costs are amortized over the remaining term of the Credit Agreement.

The table below presents the components of the Company's credit facility:

	May 4, 2019	February 2, 2019	May 5, 2018
	(In millions)		
Credit facility maximum	$ 250.0	$ 250.0	$ 250.0
Borrowing base	250.0	250.0	250.0
Outstanding borrowings	153.1	48.9	46.8
Letters of credit outstanding—standby	6.3	7.0	7.0
Utilization of credit facility at end of period	159.4	55.9	53.8
Availability [(1)]	$ 90.6	$ 194.1	$ 196.2
Interest rate at end of period	3.8%	6.0%	3.5%

	First Quarter 2019	Fiscal 2018	First Quarter 2018
Average end of day loan balance during the period	$ 141.8	$ 64.4	$ 38.8
Highest end of day loan balance during the period	196.8	156.4	151.6
Average interest rate	4.6%	4.3%	4.6%

(1) The sublimit availability for the letters of credit was $43.7 million, $43.0 million, and $43.0 million at May 4, 2019, February 2, 2019, and May 5, 2018, respectively.

10. LEGAL AND REGULATORY MATTERS

The Company is a defendant in *Rael v. The Children's Place, Inc.*, a purported class action, pending in the U.S. District Court, Southern District of California. In the initial complaint filed in February 2016, the plaintiff alleged that the Company falsely advertised discount prices in violation of California's Unfair Competition Law, False Advertising Law, and Consumer Legal Remedies Act. The plaintiff filed an amended complaint in April 2016, adding allegations of violations of other state consumer protection laws. In August 2016, the plaintiff filed a second amended complaint, adding an additional plaintiff and removing the other state law claims. The plaintiffs' second amended complaint seeks to represent a class of California purchasers and seeks, among other items, injunctive relief, damages, and attorneys' fees and costs.

The Company engaged in mediation proceedings with the plaintiffs in December 2016 and April 2017. The parties reached an agreement in principle in April 2017, and signed a definitive settlement agreement in November 2017, to settle the matter on a class basis with all individuals in the U.S. who made a qualifying purchase at The Children's Place from February 11, 2012 through the date of preliminary approval by the court of the settlement. The settlement is subject to court approval and provides for merchandise vouchers for class members who submit valid claims, as well as payment of legal fees and expenses and claims administration expenses. The court has stayed the matter, pending an appellate court ruling in another lawsuit to which the Company is not a party. The settlement, if ultimately approved by the court, will result in the dismissal of all claims through the date of the court's preliminary approval of the settlement. However, if the settlement is rejected by the court, the parties will likely return to litigation, and in such event, no assurance can be given as to the ultimate outcome of this matter. In connection with the proposed settlement, the Company recorded a reserve for $5.0 million in its consolidated financial statements in the first quarter of fiscal 2017.

The Company is also involved in various legal proceedings arising in the normal course of business. In the opinion of management, any ultimate liability arising out of these proceedings will not have a material adverse effect on the Company's financial position, results of operations, or cash flows.

11. INCOME TAXES

The Company computes income taxes using the liability method. This method requires recognition of deferred tax assets and liabilities, measured by enacted rates, attributable to temporary differences between the financial statement and income tax basis of assets and liabilities. The Company's deferred tax assets and liabilities are comprised largely of differences relating to depreciation and amortization, rent expense, inventory, stock-based compensation, and various accruals and reserves.

The Company's effective tax rate for the First Quarter 2019 was (35.0)% compared to (38.6)% during the First Quarter 2018. The effective tax rate was higher during the First Quarter 2019 primarily as a result of a decrease in excess tax benefits related to the vesting of equity shares. The excess tax benefits decreased from approximately $14.2 million in the First Quarter 2018 to $2.1 million in the First Quarter 2019.

On December 22, 2017, the U.S. government passed the Tax Cuts and Jobs Act ("the Tax Act"), which required U.S. companies to pay a mandatory one-time transition tax on historical offshore earnings that have not been repatriated to the U.S. While the Company is no longer permanently reinvested to the extent earnings were subject to the transition tax under the Tax Act, no additional income taxes have been provided on any earnings subsequent to the transition or for any additional outside basis differences inherent in these entities, as these amounts continue to be permanently reinvested in foreign operations. Determining the amount of unrecognized deferred tax liability related to any additional outside basis differences in these entities (i.e., basis differences in excess of that subject to the one-time transition tax) is not practicable.

The Company recognizes accrued interest and penalties related to unrecognized tax benefits in provision for income taxes. The total amount of unrecognized tax benefits as of May 4, 2019, February 2, 2019, and May 5, 2018 were $5.0 million, $5.0 million and $3.9 million, respectively, and is included within non-current liabilities. The Company recognized less than $0.1 million in each of the First Quarter 2019 and the First Quarter 2018, respectively, of additional interest expense related to its unrecognized tax benefits. The Company recognizes accrued interest and penalties related to unrecognized tax benefits in provision for income taxes.

The Company is subject to tax in the United States and foreign jurisdictions, including Canada and Hong Kong. The Company, joined by its domestic subsidiaries, files a consolidated income tax return for federal income tax purposes. The Company, with certain exceptions, is no longer subject to income tax examinations by U.S. federal, state and local, or foreign tax authorities for tax years 2013 and prior.

Management believes that an adequate provision has been made for any adjustments that may result from tax examinations; however, the outcome of tax audits cannot be predicted with certainty. If any issues addressed in the Company's tax audits are resolved in a manner not consistent with management's expectations, the Company could be required to adjust its provision for income tax in the period such resolution occurs.

12. DERIVATIVE INSTRUMENTS

The Company is exposed to gains and losses resulting from fluctuations in foreign currency exchange rates attributable to inventory purchases denominated in a foreign currency. Specifically, our Canadian subsidiary's functional currency is the Canadian dollar, but purchases inventory from suppliers in U.S. dollars. In order to mitigate the variability of cash flows associated with certain of these forecasted inventory purchases, we enter into foreign exchange forward contracts. These contracts typically mature within 12 months. We do not use forward contracts to engage in currency speculation and we do not enter into derivative financial instruments for trading purposes.

The Company accounts for all of its derivatives and hedging activity under FASB ASC 815--*Derivatives and Hedging*.

Under the Company's risk management policy and in accordance with guidance under the topic, in order to qualify for hedge accounting treatment, a derivative must be considered highly effective at offsetting changes in either the hedged item's cash flows or fair value. Additionally, the hedge relationship must be documented to include the risk management objective and strategy, the hedging instrument, the hedged item, the risk exposure, and how hedge effectiveness will be assessed prospectively and retrospectively. The Company formally measures effectiveness of its hedging relationships both at the hedge inception and on an ongoing basis. The Company would discontinue hedge accounting under a foreign exchange forward contract prospectively (i) if management determines that the derivative is no longer highly effective in offsetting changes in the cash flows of a hedged item, (ii) when the derivative expires or is terminated, (iii) if the forecasted transaction being hedged by the derivative is no longer probable of occurring, or (iv) if management determines that designation of the derivative as a hedge instrument is no longer appropriate.

All derivative instruments are presented at gross fair value on the consolidated balance sheets within either prepaid expenses and other current assets or accrued expenses and other current liabilities. As of May 4, 2019, the Company had foreign exchange forward contracts with an aggregate notional amount of $8.7 million and the fair value of the derivative instruments was an asset of $1.6 million. As these foreign exchange forward contracts are measured at fair value using observable market inputs such as forward rates, the Company's credit risk and our counterparties' credit risks, they are classified within Level 2 of the valuation hierarchy. Cash settlements related to these forward contracts are recorded within cash flows from operating activities within the consolidated statements of cash flows.

For derivative instruments that are designated and qualify as cash flow hedges, the effective portion of the gain or loss on the derivative is reported as a component of other comprehensive income ("OCI") and reclassified into earnings within cost of sales (exclusive of depreciation and amortization) in the same period or periods during which the hedged transaction affects earnings. Gains and losses on the derivative representing hedge ineffectiveness are recognized in earnings within selling, general, and administrative expenses, consistent with where the Company records realized and unrealized foreign currency gains and losses on transactions in foreign denominated currencies. There were no losses related to hedge ineffectiveness during the First Quarter 2019. Assuming May 4, 2019 exchange rates remain constant, $0.7 million of gains, net of tax, related to hedges of these transactions are expected to be reclassified from OCI into earnings over the next 12 months. Changes in fair value associated with derivatives that are not designated and qualified as cash flow hedges are recognized as earnings within selling, general, and administrative expenses.

The Company enters into foreign exchange forward contracts with major banks and has risk exposure in the event of nonperformance by either party. However, based on our assessment, the Company believes that obligations under the contracts will be fully satisfied. Accordingly, there was no requirement to post collateral or other security to support the contracts as of May 4, 2019.

13. SEGMENT INFORMATION

In accordance with FASB ASC 280---*Segment Reporting*, the Company reports segment data based on geography: The Children's Place U.S. and The Children's Place International. Each segment includes an e-commerce business located at *www.childrensplace.com*. Included in The Children's Place U.S. segment are the Company's U.S. and Puerto Rico-based stores and revenue from the Company's U.S.-based wholesale business. Included in The Children's Place International segment are the Company's Canadian-based stores, revenue from the Company's Canadian wholesale business and revenue from international franchisees. The Company measures its segment profitability based on operating income, defined as income before interest and taxes. Net sales and direct costs are recorded by each segment. Certain inventory procurement functions such as production and design as well as corporate overhead, including executive management, finance, real estate, human resources, legal, and information technology services are managed by The Children's Place U.S. segment. Expenses related to these functions, including depreciation and amortization, are allocated to The Children's Place International segment based primarily on net sales. The assets related to these functions are not allocated. The Company periodically reviews these allocations and adjusts them based upon changes in business circumstances. Net sales to external customers are derived from merchandise sales and the Company has no major customers that account for more than 10% of its net sales. As of May 4, 2019, The Children's Place U.S. owned and operated 849 stores and The Children's Place International owned and operated 122 stores. As of May 5, 2018, The Children's Place U.S. owned and operated 876 stores and The Children's Place International owned and operated 126 stores.

The following tables provide segment level financial information:

	Thirteen Weeks Ended	
	May 4, 2019	May 5, 2018
	(In thousands)	
Net sales:		
The Children's Place U.S.	$ 374,657	$ 395,779
The Children's Place International [1]	37,725	40,535
Total net sales	$ 412,382	$ 436,314
Operating income:		
The Children's Place U.S.	$ 4,161	$ 21,356
The Children's Place International	877	1,702
Total operating income	$ 5,038	$ 23,058
Operating income as a percent of net sales:		
The Children's Place U.S.	1.1%	5.4%
The Children's Place International	2.3%	4.2%
Total operating income	1.2%	5.3%
Depreciation and amortization:		
The Children's Place U.S.	$ 16,709	$ 15,541
The Children's Place International	1,875	1,865
Total depreciation and amortization	$ 18,584	$ 17,406
Capital expenditures:		
The Children's Place U.S.	$ 10,800	$ 10,846
The Children's Place International	209	219
Total capital expenditures	$ 11,009	$ 11,065

[1] Net sales from The Children's Place International are primarily derived from revenues from Canadian operations.

	May 4, 2019	February 2, 2019	May 5, 2018
Total assets:	(In thousands)		
The Children's Place U.S.	$ 1,183,611	$ 651,728	$ 732,815
The Children's Place International	102,343	75,318	78,112
Total assets	$ 1,285,954	$ 727,046	$ 810,927

14. SUBSEQUENT EVENTS

On May 9, 2019, the Company and certain of its domestic subsidiaries amended and restated its credit agreement with Wells Fargo Bank, National Association ("Wells Fargo"), Bank of America, N.A., HSBC Business Credit (USA) Inc., and JPMorgan Chase Bank, N.A., as lenders and Wells Fargo, as Administrative Agent, Collateral Agent and Swing Line Lender. The Credit Agreement, which now expires in May 2024, consists of a $325 million asset based revolving credit facility, with a $50 million sublimit for standby and documentary letters of credit.

Subsequent to May 4, 2019 and through May 27, 2019, the Company repurchased approximately 0.1 million shares for approximately $10.4 million, inclusive of 40 thousand shares for approximately $4.5 million withheld to cover taxes in conjunction with the vesting of stock awards.

The Company announced that its Board of Directors has declared a quarterly cash dividend of $0.56 per share to be paid on June 28, 2019 to shareholders of record on the close of business on June 18, 2019.

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This Quarterly Report on Form 10-Q contains forward-looking statements made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, including but not limited to statements relating to the Company's strategic initiatives. Forward-looking statements typically are identified by use of terms such as "may," "will," "should," "plan," "project," "expect," "anticipate," "estimate" and similar words, although some forward-looking statements are expressed differently. These forward-looking statements are based upon the Company's current expectations and assumptions and are subject to various risks and uncertainties that could cause actual results and performance to differ materially. Some of these risks and uncertainties are described in the Company's filings with the Securities and Exchange Commission, including in the "Risk Factors" section of its Annual Report on Form 10-K for the fiscal year ended February 2, 2019. Included among the risks and uncertainties that could cause actual results and performance to differ materially are the risk that the Company will be unsuccessful in gauging fashion trends and changing consumer preferences, the risks resulting from the highly competitive nature of the Company's business and its dependence on consumer spending patterns, which may be affected by changes in economic conditions, the risk that the Company's strategic initiatives to increase sales and margin are delayed or do not result in anticipated improvements, the risk of delays, interruptions and disruptions in the Company's global supply chain, including resulting from foreign sources of supply in less developed countries or more politically unstable countries, the risk that the cost of raw materials or energy prices will increase beyond current expectations or that the Company is unable to offset cost increases through value engineering or price increases, various types of litigation, including class action litigations brought under consumer protection, employment, and privacy and information security laws and regulations, the imposition of regulations affecting the importation of foreign-produced merchandise, including duties and tariffs, and the uncertainty of weather patterns. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date they were made. The Company undertakes no obligation to release publicly any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

The following discussion should be read in conjunction with the Company's unaudited financial statements and notes thereto included elsewhere in this Quarterly Report on Form 10-Q and the annual audited financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended February 2, 2019.

Terms that are commonly used in our management's discussion and analysis of financial condition and results of operations are defined as follows:

- *First Quarter 2019 — The thirteen weeks ended May 4, 2019*
- *First Quarter 2018 — The thirteen weeks ended May 5, 2018*
- *Comparable Retail Sales — Net sales, in constant currency, from stores that have been open for at least 14 consecutive months and from our e-commerce store, excluding postage and handling fees. Store closures in the current fiscal year will be excluded from Comparable Retail Sales beginning in the fiscal quarter in which the store closes. A store that is closed for a substantial remodel, relocation, or material change in size will be excluded from Comparable Retail Sales for at least 14 months beginning in the fiscal quarter in which the closure occurred. However, stores that temporarily close will be excluded from Comparable Retail Sales until the store is re-opened for a full fiscal month.*
- *Gross Margin — Gross profit expressed as a percentage of net sales*
- *SG&A — Selling, general, and administrative expenses*
- *FASB — Financial Accounting Standards Board*
- *SEC — U.S. Securities and Exchange Commission*
- *U.S. GAAP — Generally Accepted Accounting Principles in the United States*
- *FASB ASC — FASB Accounting Standards Codification, which serves as the source for authoritative U.S. GAAP, except that rules and interpretive releases by the SEC are also sources of authoritative U.S. GAAP for SEC registrants*

Our Business

We are the largest pure-play children's specialty apparel retailer in North America. We design, contract to manufacture, sell at retail and wholesale, and license to sell, trend right, high quality merchandise at value prices, the substantial majority of which is under our proprietary "The Children's Place", "Place", and "Baby Place" brand names. As of May 4, 2019, we operated 971 stores across North America, our e-commerce business at *www.childrensplace.com*, and had 212 international points of distribution open and operated by our eight franchise partners in 20 countries.

Segment Reporting

In accordance with the "*Segment Reporting*" topic of the FASB ASC, we report segment data based on geography: The Children's Place U.S. and The Children's Place International. Each segment includes an e-commerce business located at *www.childrensplace.com*. Included in The Children's Place U.S. segment are our U.S. and Puerto Rico-based stores and revenue from our U.S.-based wholesale business. Included in The Children's Place International segment are our Canadian- based stores, revenue from the Company's Canadian wholesale business, as well as revenue from international franchisees. We measure our segment profitability based on operating income, defined as income before interest and taxes. Net sales and direct costs are recorded by each segment. Certain inventory procurement functions such as production and design as well as corporate overhead, including executive management, finance, real estate, human resources, legal, and information technology services are managed by The Children's Place U.S. segment. Expenses related to these functions, including depreciation and amortization, are allocated to The Children's Place International segment based primarily on net sales. The assets related to these functions are not allocated. We periodically review these allocations and adjust them based upon changes in business circumstances. Net sales from external customers are derived from merchandise sales, and we have no major customers that account for more than 10% of our net sales. As of May 4, 2019, The Children's Place U.S. owned and operated 849 stores and The Children's Place International owned and operated 122 stores. As of May 5, 2018, The Children's Place U.S. owned and operated 876 stores and The Children's Place International owned and operated 126 stores.

Recent Developments

On April 4, 2019, we completed the acquisition of certain intellectual property and related assets (the "Gymboree Assets") of Gymboree Group, Inc. and related entities, which includes the worldwide rights to the names "Gymboree" and "Crazy 8" and other intellectual property, including trademarks, domain names, copyrights, and customer databases. The purchase price was funded by cash on hand and borrowings under the Company's revolving credit facility.

Additionally, on May 9, 2019, we amended and restated our Credit Agreement to increase the availability of our asset based revolving credit facility to $325 million from $250 million. See Note 14 "*Subsequent Events*" for information concerning the amendment to the Credit Agreement.

On May 10, 2019, tariffs on certain imported merchandise from China increased from 10% to 25%. For the Company, products affected include backpacks, fashion bags, lunch bags, and hats. The Company expects this increase to have a minimal adverse affect on our financial position, results of operations, and cash flows. Tariffs of 25% have been formally proposed on all remaining goods imported from China. If imposed, these tariffs would affect all other of the Company's products imported from China, such as apparel and footwear, and would have an adverse impact on our financial position, results of operations, and cash flows.

Operating Highlights

Our Comparable Retail Sales decreased 4.6% during the First Quarter 2019 and net sales decreased by $23.9 million, or 5.5%, to $412.4 million during the First Quarter 2019. First Quarter 2019 was severely impacted by competitor inventory liquidations and delayed income tax refunds.

Gross margin leveraged 20 basis points to 36.9% during the First Quarter 2019 from 36.7% during the First Quarter 2018. The comparability of our gross margin was affected by certain restructuring and fleet optimization items during the First Quarter 2019 and First Quarter 2018. Excluding the impact of these items, gross margin de-leveraged 30 basis points to 36.7% during the First Quarter 2019 from 37.0% during the First Quarter 2018. The de-leverage primarily related to competitor inventory liquidations, de-leverage of fixed expenses resulting from the decline in Comparable Retail Sales and the adverse impact of increased penetration of our e-commerce business. This was offset by our merchandise margin expansion, which was driven by strong inventory management, lower product costs, and higher realized pricing.

Selling, general, and administrative expenses increased $9.5 million to $128.0 million during the First Quarter 2019 from $118.5 million during the First Quarter 2018. As a percentage of net sales, SG&A increased 380 basis points to 31.0% during the First Quarter 2019 from 27.2% during the First Quarter 2018. The increase was primarily due to de-leverage of fixed expenses resulting from the decline in Comparable Retail Sales and higher incentive compensation expense.

Provision (benefit) for income taxes was a benefit of $1.2 million during the First Quarter 2019 compared to a benefit of $8.8 million during the First Quarter 2018. Our effective tax rate was (35.0)% and (38.6)% in the First Quarter 2019 and the First Quarter 2018, respectively. The effective tax rate was higher during the First Quarter 2019 primarily as a result of a decrease in excess tax benefits related to the vesting of equity shares. The excess tax benefits decreased from approximately $14.2 million in the First Quarter 2018 to an excess tax benefit of $2.1 million in the First Quarter 2019.

Net income was $4.5 million during the First Quarter 2019 compared to $31.5 million during the First Quarter 2018, due to the factors discussed above. Earnings per diluted share was $0.28 in the First Quarter 2019 compared to $1.78 per diluted share in the First Quarter 2018. This decrease in earnings per share is due to the factors noted above, partially offset by a lower weighted average common shares outstanding of approximately 1.6 million, which is the result of our share repurchase program.

We continue to make progress on our key strategic growth initiatives--superior product, business transformation through technology, alternate channels of distribution, and fleet optimization.

Focus on product remains our top priority and strong product acceptance and our inventory management are anticipated to deliver gross margin and inventory productivity benefits.

Our business transformation through technology initiative has two key components: digital transformation and inventory management. With respect to digital transformation, our goal is to deliver one to one personalization focusing on improving customer acquisition and increasing customer engagement with our brand and to continue to gain market share. The transformation of our digital capabilities will continue during fiscal 2019 as we continue to make foundational enhancements to further support our digital platform, including: moving to responsive design, which will provide a consistent customer experience across all devices; adding a content management system; adding a digital asset management system; cross device linking to drive personalization; a full point-of-sale roll-out with save the sale functionality; and the continued roll-out of buy-on-line ship to store. With respect to inventory management, we have implemented assortment planning, allocation, replenishment, order planning, and forecasting tools.

With respect to alternate channels of distribution, we continued our international expansion program during the First Quarter 2019 with our franchise partners and added additional international points of distribution (stores, shop in shops, e-commerce site) bringing our total count to 212 points of distribution operating in 20 countries. Along with Semir, China's largest specialty children's apparel retailer, we plan to open approximately 15 to 20 locations in the China market in fiscal 2019. In our wholesale business, our relationship with Amazon continues to develop with the expansion of our replenishment program.

We continue to evaluate our store fleet as part of our fleet optimization initiative to improve store productivity and plan to close approximately 300 stores through fiscal 2020, which includes the 213 stores closed since the announcement of this initiative. We have identified 25 new store openings through our Gymboree due diligence and plan to open approximately 10 new stores in fiscal 2019. However, we will remain a net closer of stores.

During the First Quarter 2019, we repurchased approximately 0.3 million shares for approximately $33.3 million under our share repurchase program inclusive of shares surrendered to cover tax withholdings associated with the vesting of equity awards. As of May 4, 2019, there was approximately $206.0 million remaining pursuant to the 2018 Share Repurchase Program. We also paid cash dividends of $8.9 million during the First Quarter 2019 and announced that our Board of Directors has declared a quarterly cash dividend of $0.56 per share to be paid on June 28, 2019 to shareholders of record on the close of business on June 18, 2019.

We have subsidiaries whose operating results are based in foreign currencies and are thus subject to the fluctuations of the corresponding translation rates into U.S. dollars. The table below summarizes those average translation rates that most impact our operating results:

	Thirteen Weeks Ended	
	May 4, 2019	**May 5, 2018**
Average Translation Rates [1]		
Canadian Dollar	0.7505	0.7840
Hong Kong Dollar	0.1274	0.1276
China Yuan Renminbi	0.1490	0.1571

[1] The average translation rates are the average of the monthly translation rates used during each period to translate the respective income statements. The rates represent the U.S. dollar equivalent of a unit of each foreign currency.

CRITICAL ACCOUNTING POLICIES

The preparation of consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues and expenses during the reported period. In many cases, there are alternative policies or estimation techniques that could be used. We continuously review the application of our accounting policies and evaluate the appropriateness of the estimates used in preparing our financial statements; however, estimates routinely require adjustment based on changing circumstances and the receipt of new or better information. Consequently, actual results could differ from our estimates.

The accounting policies and estimates discussed below include those that we believe are the most critical to aid in fully understanding and evaluating our financial results. Senior management has discussed the development and selection of our critical accounting policies and estimates with the Audit Committee of our Board of Directors, which has reviewed our related disclosures herein.

Inventory Valuation- We value inventory at the lower of cost or net realizable value, with cost determined using an average cost method. The estimated market value of inventory is determined based on an analysis of historical sales trends of our individual product categories, the impact of market trends and economic conditions, and a forecast of future demand, as well as plans to sell through inventory. Estimates may differ from actual results due to the quantity, quality, and mix of products in inventory, consumer and retailer preferences, and market conditions. Our historical estimates have not differed materially from actual results and a 10% difference in our reserve as of May 4, 2019 would have impacted net income by approximately $0.1 million. Our reserve balance at May 4, 2019 was approximately $1.8 million compared to $3.7 million at May 5, 2018.

Reserves for inventory shrinkage, representing the risk of physical loss of inventory, are estimated based on historical experience and are adjusted based upon physical inventory counts. A 0.5% difference in our shrinkage rate as a percentage of cost of goods sold could impact each quarter's net income by approximately $0.6 million.

Stock-Based Compensation- We account for stock-based compensation according to the provisions of FASB ASC 718-- *Compensation-Stock Compensation*.

Time Vesting and Performance-Based Awards

We generally grant time vesting and performance-based stock awards to employees at management levels and above. We also grant time vesting stock awards to our non-employee directors. Time vesting awards are granted in the form of restricted stock units that require each recipient to complete a service period ("Deferred Awards"). Deferred Awards granted to employees generally vest ratably over three years. Deferred Awards granted to non-employee directors generally vest after one year. Performance-based stock awards are granted in the form of restricted stock units which have a performance criteria that must be achieved for the awards to be earned in addition to a service period requirement ("Performance Awards"), and each Performance Award has a defined number of shares that an employee can earn (the "Target Shares"). With the approval of the Board's Compensation Committee, the Company may settle vested Deferred Awards and Performance Awards to the employee in shares, in a cash amount equal to the market value of such shares at the time all requirements for delivery of the award have been met, or in part shares and cash. For Performance Awards issued during fiscal 2016 and fiscal 2017 (the “2016 and 2017 Performance Awards”), an employee may earn from 0% to 200% of their Target Shares based on the cumulative adjusted earnings per share achieved for the three-year performance period, adjusted operating margin expansion achieved for the three-year performance period, and adjusted return on invested capital ("adjusted ROIC") achieved at the end of the performance period. The 2016 and 2017 Performance Awards cliff vest, if earned, after completion of the applicable three year performance period. The fair value of the 2016 and 2017 Performance Awards granted is based on the closing price of our common stock on the grant date. For Performance Awards issued during fiscal 2018 (the “2018 Performance Awards”), an employee may earn from 0% to 250% of their Target Shares based on the cumulative adjusted earnings per share achieved for the three-year performance period, adjusted operating margin expansion achieved for the three-year performance period, adjusted ROIC achieved as of the end of the performance period, and our adjusted ROIC relative to that of companies in our peer group as of the end of the performance period. The 2018 Performance Awards cliff vest, if earned, after completion of the three-year performance period. The fair value of the 2018 Performance Awards granted is based on the closing price of our common stock on the grant date. Compensation expense is recognized ratably over the related service period reduced for estimated forfeitures of those awards not expected to vest due to employee turnover. While actual forfeitures could vary significantly from those estimated, a 10% change in our estimated forfeiture rate would impact our fiscal 2019 net income by approximately $1.1 million.

Impairment of Long-Lived Assets- We periodically review our long-lived assets when events indicate that their carrying value may not be recoverable. Such events include a historical or projected trend of cash flow losses or a future expectation that we will sell or dispose of an asset significantly before the end of its previously estimated useful life. In reviewing for

impairment, we group our long-lived assets at the lowest possible level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities.

We review all stores that have been open for at least two years, or sooner if circumstances should dictate, on at least an annual basis. We believe waiting two years allows a store to reach a maturity level where a more comprehensive analysis of financial performance can be performed. For each store that shows indications of operating losses, we project future cash flows over the remaining life of the lease and compare the total undiscounted cash flows to the net book value of the related long-lived assets. If the undiscounted cash flows are less than the related net book value of the long-lived assets, they are written down to their fair market value. We primarily determine fair market value to be the discounted future cash flows associated with those assets. In evaluating future cash flows, we consider external and internal factors. External factors comprise the local environment in which the store resides, including mall traffic, competition, and their effect on sales trends. Internal factors include our ability to gauge the fashion taste of our customers, control variable costs such as cost of sales and payroll, and in certain cases, our ability to renegotiate lease costs. If external factors should change unfavorably, if actual sales should differ from our projections, or if our ability to control costs is insufficient to sustain the necessary cash flows, future impairment charges could be material. At May 4, 2019, the average net book value per store was approximately $0.1 million.

Income Taxes-We utilize the liability method of accounting for income taxes as set forth in FASB ASC 740--Income Taxes. Under the liability method, deferred taxes are determined based on the temporary differences between the financial statement and tax basis of assets and liabilities, as well as for net operating losses and tax credit carryforwards. Deferred tax assets and liabilities are measured using currently enacted tax rates that apply to taxable income in effect for the years in which the basis differences and tax assets are expected to be realized. A valuation allowance is recorded when it is more likely than not that some of the deferred tax assets will not be realized. In determining the need for valuation allowances we consider projected future taxable income, the availability of tax planning strategies, taxable income in prior carryback years, and future reversals of existing taxable temporary differences. If, in the future we determine that we would not be able to realize our recorded deferred tax assets, an increase in the valuation allowance would decrease earnings in the period in which such determination is made.

We assess our income tax positions and record tax benefits for all years subject to examination based upon our evaluation of the facts, circumstances and information available at the reporting date. For those tax positions where it is more likely than not that a tax benefit will be sustained, we have recorded the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more likely than not that a tax benefit will be sustained, no tax benefit has been recognized in the financial statements.

Fair Value Measurement and Financial Instruments- FASB ASC 820--*Fair Value Measurements and Disclosure* provides a single definition of fair value, together with a framework for measuring it and requires additional disclosure about the use of fair value to measure assets and liabilities.

This topic defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and establishes a three-level hierarchy, which encourages an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels of the hierarchy are defined as follows:

- Level 1 - inputs to the valuation techniques that are quoted prices in active markets for identical assets or liabilities
- Level 2 - inputs to the valuation techniques that are other than quoted prices but are observable for the assets or liabilities, either directly or indirectly
- Level 3 - inputs to the valuation techniques that are unobservable for the assets or liabilities

Our cash and cash equivalents, accounts receivable, assets of the Company’s Deferred Compensation Plan, accounts payable, current lease liabilities, and revolving loan are all short-term in nature. As such, their carrying amounts approximate fair value and fall within Level 1 of the fair value hierarchy. The Company stock included in the Deferred Compensation Plan is not subject to fair value measurement.

Our assets measured at fair value on a nonrecurring basis include long-lived assets, such as intangible assets, fixed assets, and right-of-use assets. We review the carrying amounts of such assets when events indicate that their carrying amounts may not be recoverable. Any resulting asset impairment would require that the asset be recorded at its fair value. The resulting fair value measurements of the assets are considered to fall within Level 3 of the fair value hierarchy.

Our derivative assets and liabilities include foreign exchange forward contracts that are measured at fair value using observable market inputs such as forward rates, our credit risk, and our counterparties’ credit risks. Based on these inputs, our derivative assets and liabilities are classified within Level 2 of the valuation hierarchy.

Insurance and Self-Insurance Liabilities- Based on our assessment of risk and cost efficiency, we self-insure as well as purchase insurance policies to provide for workers' compensation, general liability and property losses, cyber-security coverage, as well as directors' and officers' liability, vehicle liability, and employee medical benefits. We estimate risks and record a liability based upon historical claim experience, insurance deductibles, severity factors, and other actuarial assumptions. These estimates include inherent uncertainties due to the variability of the factors involved, including type of injury or claim, required services by the providers, healing time, age of claimant, case management costs, location of the claimant, and governmental regulations. While we believe that our risk assessments are appropriate, these uncertainties or a deviation in future claims trends from recent historical patterns could result in our recording additional or reduced expenses, which may be material to our results of operations. Our historical estimates have not differed materially from actual results and a 10% difference in our insurance reserves as of May 4, 2019 would have impacted net income by approximately $0.5 million.

Recently Issued Accounting Standards

Adopted in Fiscal 2019

In August 2017, the FASB issued guidance relating to the accounting for hedging activities. This guidance aims to better align an entity’s risk management activities and financial reporting for hedging relationships through changes to both the designation and measurement guidance for qualifying hedging relationships and the presentation of hedge results. The amendments in the guidance expand and refine hedge accounting for both non-financial and financial risk components and align the recognition and presentation of the effects of the hedging instrument and the hedged item in the financial statements. We adopted this guidance in the First Quarter 2019. This adoption did not have a material impact on the Company’s consolidated financial statements.

In February 2016, the FASB issued guidance relating to the accounting for leases. This guidance applies a right-of-use model that requires a lessee to record, for all leases with a lease term of more than 12 months, an asset representing its right to use the underlying asset for the lease term and a liability to make lease payments. The lease term is the noncancellable period of the lease, and includes both periods covered by an option to extend the lease, if the lessee is reasonably certain to exercise that option, and periods covered by an option to terminate the lease, if the lessee is reasonably certain not to exercise that termination option. We adopted this guidance in the First Quarter 2019 using the modified-retrospective method. Refer to Note 3, "Leases”, for additional information.

To Be Adopted After Fiscal 2019

In August 2018, the FASB issued guidance related to the accounting for implementation costs incurred in a cloud computing arrangement that is a service contract. The guidance aims to align the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software and hosting arrangements that include an internal-use software license. The guidance is effective for annual reporting periods, and interim periods within those years, beginning after December 15, 2019. We do not expect the guidance to have a material impact on our consolidated financial statements.

In August 2018, the FASB issued guidance related to disclosure requirements for fair value measurement. The amendments modify current fair value measurement disclosure requirements by removing, adding, or modifying certain fair value measurement disclosures. The guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019, and early adoption is permitted. We plan to adopt the new disclosure requirements on a prospective basis beginning in the year of adoption. We do not expect the guidance to have a material impact on our consolidated financial statements.

RESULTS OF OPERATIONS

The following table sets forth, for the periods indicated, selected statement of operations data expressed as a percentage of net sales. We primarily evaluate the results of our operations as a percentage of net sales rather than in terms of absolute dollar increases or decreases by analyzing the year over year change in our business expressed as a percentage of net sales (i.e., “basis points”). For example, gross profit increased approximately 20 basis points to 36.9% of net sales during the First Quarter 2019 from 36.7% during the First Quarter 2018. Accordingly, to the extent that our sales have increased at a faster rate than our costs (i.e., “leveraging”), the more efficiently we have utilized the investments we have made in our business. Conversely, if our sales decrease or if our costs grow at a faster pace than our sales (i.e., “de-leveraging”), we have less efficiently utilized the

investments we have made in our business.

	Thirteen Weeks Ended	
	May 4, 2019	May 5, 2018
Net sales	100.0 %	100.0 %
Cost of sales (exclusive of depreciation and amortization)	63.1	63.3
Gross profit	36.9	36.7
Selling, general, and administrative expenses	31.0	27.2
Depreciation and amortization	4.5	4.0
Asset impairment charge	0.1	0.3
Operating income	1.2	5.3
Income before income taxes	0.8	5.2
Provision (benefit) for income taxes	(0.3)	(2.0)
Net income	1.1 %	7.2 %
Number of Company-operated stores, end of period	971	1,002

Table may not add due to rounding.

The following tables set forth net sales by segment, for the periods indicated.

	Thirteen Weeks Ended	
	May 4, 2019	May 5, 2018
Net sales:	(In thousands)	
The Children's Place U.S.	$ 374,657	$ 395,779
The Children's Place International	37,725	40,535
Total net sales	$ 412,382	$ 436,314

First Quarter 2019 Compared to the First Quarter 2018

Net sales decreased by $23.9 million, or 5.5%, to $412.4 million during the First Quarter 2019 from $436.3 million during the First Quarter 2018. First Quarter 2019 was adversely impacted by competitor inventory liquidations and delayed income tax refunds. Our net sales decreased by $23.9 million driven primarily by a Comparable Retail Sales decrease of 4.6%.

We believe that our e-commerce and brick-and-mortar retail store operations are highly interdependent, with both sharing common customers purchasing from a common pool of product inventory. Accordingly, we believe that consolidated omni-channel reporting presents the most meaningful and appropriate measure of our performance, including Comparative Retail Sales and revenues.

The Children's Place U.S. net sales decreased $21.1 million, or 5.3%, to $374.7 million in the First Quarter 2019 compared to $395.8 million in the First Quarter 2018. This decrease primarily resulted from a U.S. Comparable Retail Sales decrease of 4.4%.

The Children's Place International net sales decreased $2.8 million, or 6.9%, to $37.7 million in the First Quarter 2019 compared to $40.5 million in the First Quarter 2018. The decrease resulted primarily from a Canadian Comparable Retail Sales decrease of 6.4%.

Total e-commerce sales, which include postage and handling, increased to approximately 29.2% of net sales during First Quarter 2019 from approximately 26.8% during First Quarter 2018.

Gross profit decreased by $8.2 million to $152.0 million during the First Quarter 2019 from $160.2 million during the First Quarter 2018. Gross margin leveraged 20 basis points to 36.9% during the First Quarter 2019 from 36.7% during the First Quarter 2018. The comparability of our gross margin was affected by certain restructuring and fleet optimization items during the First Quarter 2019 and First Quarter 2018. Excluding the impact of these items, gross margin de-leveraged 30 basis points to 36.7% during the First Quarter 2019 from 37.0% during the First Quarter 2018. The de-leverage primarily related to competitor inventory liquidations, de-leverage of fixed expenses resulting from the decline in Comparable Retail Sales and the

adverse impact of increased penetration of our e-commerce business. This was offset by our merchandise margin expansion, which was driven by strong inventory management, lower product costs, and higher realized pricing.

Gross profit as a percentage of net revenues is dependent upon a variety of factors, including changes in the relative sales mix among distribution channels, changes in the mix of products sold, the timing and level of promotional activities, foreign currency exchange rates, and fluctuations in material costs. These factors, among others, may cause gross profit as a percentage of net revenues to fluctuate from period to period.

Selling, general, and administrative expenses increased $9.5 million to $128.0 million during the First Quarter 2019 from $118.5 million during the First Quarter 2018. As a percentage of net sales, SG&A increased 380 basis points to 31.0% during the First Quarter 2019 from 27.2% during the First Quarter 2018. The increase was primarily due to de-leverage of fixed expenses resulting from the decline in Comparable Retail Sales and higher incentive compensation expense.

Asset impairment charges were $0.3 million during the First Quarter 2019, primarily all of which related to the full impairment of five stores. Asset impairment charges during the First Quarter 2018 were $1.3 million, of which $0.3 million related to the full impairment of two stores, and $1.0 million related to the write-down of information technology systems.

Depreciation and amortization was $18.6 million during the First Quarter 2019 compared to $17.4 million during the First Quarter 2018 reflecting increased depreciation associated with our ongoing investment in business transformation initiatives.

Benefit for income taxes was $1.2 million during the First Quarter 2019 compared to $8.8 million during the First Quarter 2018. Our effective tax rate was (35.0)% and (38.6)% in the First Quarter 2019 and the First Quarter 2018, respectively. The effective tax rate was higher during the First Quarter 2019 primarily as a result of a decrease in excess tax benefits related to the vesting of equity shares. The excess tax benefits decreased from approximately $14.2 million in the First Quarter 2018 to $2.1 million in the First Quarter 2019.

Net income was $4.5 million during the First Quarter 2019 compared to $31.5 million during the First Quarter 2018, due to the factors discussed above. Earnings per diluted share was $0.28 in the First Quarter 2019 compared to $1.78 per diluted share in the First Quarter 2018. This decrease in earnings per share is due to the factors noted above, partially offset by a lower weighted average common shares outstanding of approximately 1.6 million, which is the result of our share repurchase program.

LIQUIDITY AND CAPITAL RESOURCES

Liquidity

Our working capital needs follow a seasonal pattern, peaking during the third fiscal quarter based on seasonal inventory purchases. Our primary uses of cash are for working capital requirements, which are principally inventory purchases, and the financing of capital projects, including investments in new systems, and the repurchases of our common stock and payment of dividends.

Our working capital decreased $287.4 million to a deficit of $126.2 million at May 4, 2019 compared to $161.2 million at May 5, 2018, primarily due to the funding of the Gymboree assets acquisition and the adoption of Topic 842, which resulted in an increase in current lease liabilities. During the First Quarter 2019, the Company increased its borrowings under its revolving credit facility in order to fund the $76.0 million Gymboree assets acquisition. During the First Quarter 2019, we repurchased approximately 0.3 million shares for approximately $33.3 million, inclusive of shares repurchased and surrendered to cover tax withholdings associated with the vesting of equity awards. During the First Quarter 2018, we repurchased approximately 1.0 million shares for approximately $162.2 million, inclusive of shares repurchased and surrendered to cover tax withholdings associated with the vesting of equity awards. We also paid cash dividends of $8.9 million and $8.4 million during the First Quarter 2019 and the First Quarter 2018, respectively. Subsequent to May 4, 2019 and through May 27, 2019, we repurchased approximately 0.1 million shares for approximately $10.4 million, inclusive of 40 thousand shares for approximately $4.5 million withheld to cover taxes in conjunction with the vesting of stock awards, and declared a quarterly cash dividend of $0.56 per share to be paid on June 28, 2019 to shareholders of record on the close of business on June 18, 2019.

At May 4, 2019, our credit facility provides for borrowings up to the lesser of $250.0 million or our borrowing base, as defined by the credit facility agreement (see “Credit Facility” below). At May 4, 2019, we had $153.1 million of outstanding borrowings and $90.6 million available for borrowing. In addition, at May 4, 2019, we had $6.3 million of outstanding letters of credit with an additional $43.7 million available for issuing letters of credit.

We expect to be able to meet our working capital and capital expenditure requirements for the foreseeable future by using our cash on hand, cash flows from operations, and availability under our credit facility.

Credit Facility

We and certain of our domestic subsidiaries maintain a credit agreement with Wells Fargo Bank, National Association (“Wells Fargo”), Bank of America, N.A., HSBC Business Credit (USA) Inc., and JPMorgan Chase Bank, N.A. as lenders (collectively, the “Lenders”) and Wells Fargo, as Administrative Agent, Collateral Agent and Swing Line Lender (the “Credit Agreement”). The following discussion of the Company's Credit Agreement is as of May 4, 2019. See Note 14 "*Subsequent Events*" for information concerning an amendment to the Credit Agreement.

The Credit Agreement consists of a $250 million asset based revolving credit facility, with a $50 million sublimit for standby and documentary letters of credit and an uncommitted accordion feature that could provide up to $50 million of additional availability. Revolving credit loans outstanding under the Credit Agreement bear interest, at the Company’s option, at:

(i) the prime rate plus a margin of 0.50% to 0.75% based on the amount of our average excess availability under the facility; or
(ii) the London InterBank Offered Rate, or “LIBOR”, for an interest period of one, two, three, or six months, as selected by us, plus a margin of 1.25% to 1.50% based on the amount of our average excess availability under the facility.

We are charged an unused line fee of 0.25% on the unused portion of the commitments. Letter of credit fees range from 0.625% to 0.750% for commercial letters of credit and range from 0.75% to 1.00% for standby letters of credit. Letter of credit fees are determined based on the amount of our average excess availability under the facility. The amount available for loans and letters of credit under the Credit Agreement is determined by a borrowing base consisting of certain credit card receivables, certain trade and franchise receivables, certain inventory and the fair market value of certain real estate, subject to certain reserves.

The outstanding obligations under the Credit Agreement may be accelerated upon the occurrence of certain events, including, among others, non-payment, breach of covenants, the institution of insolvency proceedings, defaults under other material indebtedness and a change of control, subject, in the case of certain defaults, to the expiration of applicable grace periods. We are not subject to any early termination fees.

The Credit Agreement contains covenants, which include conditions on stock repurchases and the payment of cash dividends or similar payments. Credit extended under the Credit Agreement is secured by a first priority security interest in substantially all of our U.S. assets excluding intellectual property, software, equipment, and fixtures.

We have capitalized an aggregate of approximately $4.3 million in deferred financing costs related to the Credit Agreement. The unamortized balance of deferred financing costs at May 4, 2019 was approximately $0.4 million. Unamortized deferred financing costs are amortized over the remaining term of the Credit Agreement.

Cash Flows and Capital Expenditures

During the First Quarter 2019, cash flows provided by operating activities were $21.2 million compared to cash flows used in operating activities of $12.7 million during the First Quarter 2018. The increase was primarily due to working capital changes.

During the First Quarter 2019, cash flows used in investing activities were $86.5 million compared to cash flows provided by investing activities of $3.6 million during the First Quarter 2018. This change was primarily due to the Gymboree assets acquisition.

During the First Quarter 2019, cash flows provided by financing activities were $62.0 million compared to cash flows used in financing activities of $145.3 million during the First Quarter 2018. The increase primarily resulted from a decrease in purchases of our common stock, primarily related to our accelerated share repurchase program in the First Quarter 2018, as well as increased borrowings under our revolving credit facility during the First Quarter 2019.

We anticipate that total capital expenditures will be approximately $75 million in fiscal 2019, primarily related to our business transformation initiatives, system integration costs associated with our re-launch of the Gymboree brand, and new store openings, compared to $71 million in fiscal 2018. Our ability to continue to meet our capital requirements in fiscal 2019 depends on our cash on hand, our ability to generate cash flows from operations, and our available borrowings under our revolving credit facility. Cash flow generated from operations depends on our ability to achieve our financial plans. During the First Quarter 2019, we were able to fund our capital expenditures with cash on hand and cash generated from operating activities supplemented by funds from our revolving credit facility. We believe that our existing cash on hand, cash generated from operations, and funds available to us through our revolving credit facility will be sufficient to fund our capital and other cash requirements for the foreseeable future.

Derivative Instruments

We are exposed to gains and losses resulting from fluctuations in foreign currency exchange rates attributable to inventory purchases denominated in a foreign currency. Specifically, our Canadian subsidiary's functional currency is the Canadian dollar, but purchases inventory from suppliers in U.S. dollars. In order to mitigate the variability of cash flows associated with certain of these forecasted inventory purchases, we enter into foreign exchange forward contracts. These contracts typically mature within 12 months. We do not use forward contracts to engage in currency speculation, and we do not enter into derivative financial instruments for trading purposes.

All derivative instruments are presented at gross fair value on the consolidated balance sheets within either prepaid expenses and other current assets or accrued expenses and other current liabilities. As of May 4, 2019, we had foreign exchange forward contracts with an aggregate notional amount of $8.7 million and the fair value of the derivative instruments was an asset of $1.6 million.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

In the normal course of business, our financial position and results of operations are routinely subject to market risk associated with interest rate movements on borrowings and investments and currency rate movements on non-U.S. dollar denominated assets, liabilities, income, and expenses. We utilize cash from operations and short-term borrowings to fund our working capital and investment needs.

Cash and Cash Equivalents

Cash and cash equivalents are normally invested in short-term financial instruments that will be used in operations within 90 days of the balance sheet date. Because of the short-term nature of these instruments, changes in interest rates would not materially affect the fair value of these financial instruments.

Interest Rates

Our credit facility bears interest at a floating rate equal to the prime rate or LIBOR, plus a calculated spread based on our average excess availability. As of May 4, 2019, we had $153.1 million in borrowings under our credit facility. A 10% change in the prime rate or LIBOR interest rates would not have had a material impact on our interest expense.

Foreign Assets and Liabilities

Assets and liabilities outside the United States are primarily located in Canada and Hong Kong. Our investments in our Canadian and Hong Kong subsidiaries are considered long-term. As of May 4, 2019, net assets in Canada and Hong Kong were approximately $34.0 million and $43.0 million, respectively. A 10% increase or decrease in the Canadian and Hong Kong exchange rates would increase or decrease the corresponding net investment by approximately $3.4 million and $4.3 million, respectively. All changes in the net investment of our foreign subsidiaries are recorded in other comprehensive income as unrealized gains or losses.

As of May 4, 2019, we had approximately $58.8 million of our cash and cash equivalents held in foreign countries, of which approximately $11.2 million was in Canada, approximately $43.1 million was in Hong Kong and approximately $4.5 million was in other foreign countries.

Foreign Operations

We have exchange rate exposure primarily with respect to certain revenues and expenses denominated in Canadian dollars. As a result, fluctuations in exchange rates impact the amount of our reported sales and expenses. Assuming a 10% change in foreign exchange rates, First Quarter 2019 net sales could have decreased or increased by approximately $3.2 million and total costs and expenses could have decreased or increased by approximately $4.4 million. Additionally, we have foreign currency denominated receivables and payables that when settled, result in transaction gains or losses. At May 4, 2019, we had foreign currency denominated receivables and payables, including inter-company balances, of $4.3 million and $5.7 million, respectively.

Our Canadian subsidiary's functional currency is the Canadian dollar but purchases inventory from suppliers in U.S. dollars. In order to mitigate the variability of cash flows associated with certain of these forecasted inventory purchases, we enter into foreign exchange forward contracts. As of May 4, 2019, we had foreign exchange forward contracts with an aggregate notional amount of $8.7 million and the fair value of the derivative instruments was an asset of $1.6 million.

Assuming a 10% change in Canadian foreign exchange rates, the fair value of these instruments could have decreased by or increased by approximately $0.9 million. Any resulting changes in the fair value of the instruments would be partially offset by changes in the underlying balance sheet positions. We do not hedge all transactions denominated in foreign currency.

We import a vast majority of our merchandise from foreign countries, primarily China, Bangladesh, Vietnam, India, and Indonesia. Consequently, any significant or sudden change in these foreign countries' political, foreign trade, financial, banking or currency policies and practices, or the occurrence of significant labor unrest, could have a material adverse impact on our financial position, results of operations, and cash flows.

Item 4. CONTROLS AND PROCEDURES.

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed only to provide "reasonable assurance" that the controls and procedures will meet their objectives. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our company have been detected.

Management, including our Chief Executive Officer and President and our Chief Operating Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as defined in Rule 13a-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of May 4, 2019. Based on that evaluation, our Chief Executive Officer and President and our Chief Operating Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level, as of May 4, 2019, to ensure that all information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms and is accumulated and communicated to our management, including our principal executive, principal accounting and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during our most recently completed fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS.

Certain legal proceedings in which we are involved are discussed in Note 10 to the consolidated financial statements and Part I, Item 3 of our Annual Report on Form 10-K for the year ended February 2, 2019. See Note 10 to the accompanying consolidated financial statements for a discussion of the recent developments concerning our legal proceedings.

Item 1A. RISK FACTORS.

There were no material changes to the risk factors disclosed in Item 1A of Part I in our Annual Report on Form 10-K for the year ended February 2, 2019.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.

In March 2018, the Board of Directors authorized a $250 million share repurchase program (the "2018 Share Repurchase Program"). Under the Share Repurchase Programs, the Company may repurchase shares in the open market at current market prices at the time of purchase or in privately negotiated transactions. The timing and actual number of shares repurchased under the programs will depend on a variety of factors including price, corporate and regulatory requirements, and other market and business conditions. We may suspend or discontinue the program at any time, and may thereafter reinstitute purchases, all without prior announcement.

The following table provides a month-by-month summary of our share repurchase activity during the First Quarter 2019:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value (in thousands) of Shares that May Yet Be Purchased Under the Plans or Programs
2/3/19-3/2/19 [1]	108,893	$ 91.08	108,200	$ 229,171
3/3/19-4/6/19 [2]	173,264	96.39	173,264	212,470
4/7/19-5/4/19	62,800	107.54	62,800	205,716
Total	344,957	$ 96.75	344,264	$ 205,716

(1) Consists of 693 shares acquired as treasury stock as directed by participants in the Company's deferred compensation plan .
(2) Consists of 158,864 shares withheld to cover taxes in conjunction with the vesting of stock awards.

Item 6. Exhibits.

The following exhibits are filed with this Quarterly Report on Form 10-Q:

10.1(+)(*)	Form of Performance-Based Restricted Stock Unit Award Agreement under the 2011 Equity Incentive Plan (Senior Vice President & above).
10.2(+)(*)	Form of Performance-Based Restricted Stock Unit Award Agreement under the 2011 Equity Incentive Plan (below Senior Vice President).
10.3(+)(*)	Letter Agreement dated February 13, 2019 between The Children's Place Services Company, LLC and Claudia Lima-Guinehut.
10.4(+)(*)	Letter Agreement dated April 9, 2019 between The Children's Place Services Company, LLC and Leah Swan.
10.5(+)	Amended and Restated Credit Agreement, dated as of May 9, 2019, by and among the Company and The Children's Place Services Company, LLC, as borrowers, The Children's Place (International), LLC, The Children's Place Canada Holdings, Inc., the childrensplace.com, inc., TCP IH II, LLC, TCP International IP Holdings, LLC and TCP International Product Holdings, LLC, as guarantors, Wells Fargo Bank, National Association (successor by merger to Wells Fargo Retail Finance, LLC), as Administrative Agent and Collateral Agent, L/C Issuer, Swing Line Lender and as a lender and Bank of America, N.A., HSBC Bank USA, N.A. and JPMorgan Chase Bank, N.A., as lenders.
10.6(+)	Asset Purchase Agreement, dated March 1, 2019, by and among TCP Brands, LLC, as buyer, and Gymboree Group, Inc. and its subsidiaries, as sellers.
31.1(+)	Certificate of Principal Executive Officer pursuant to Section 302 of the Sarbanes Oxley Act of 2002.
31.2(+)	Certificate of Principal Financial Officer pursuant to Section 302 of the Sarbanes Oxley Act of 2002.
32(+)	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	XBRL Instance Document.
101.SCH*	XBRL Taxonomy Extension Schema.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase.
101.DEF*	XBRL Taxonomy Extension Definition Linkbase.
101.LAB*	XBRL Taxonomy Extension Label Linkbase.
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase.

(+) Filed herewith.

(*) Compensation arrangement.

* Pursuant to Rule 406T of Regulation S-T, these interactive data files are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933 or Section 18 of the Securities Exchange Act of 1934 and otherwise are not subject to liability.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

THE CHILDREN'S PLACE, INC.

Date: May 29, 2019

By: /S/ JANE T. ELFERS

JANE T. ELFERS
Chief Executive Officer and President
(Principal Executive Officer)

Date: May 29, 2019

By: /S/ ROBERT HELM

ROBERT HELM
Vice President, Finance and Accounting
(Principal Accounting Officer)

EXHIBIT 10.1
SVPs and above

PERFORMANCE-BASED RESTRICTED STOCK UNIT AWARD AGREEMENT

THE CHILDREN'S PLACE, INC.

This Performance-Based Restricted Stock Unit Award Agreement (the "Agreement"), effective as of _____, 20___ (the "Award Date"), is entered into by and between The Children's Place, Inc., a Delaware corporation (the "Company"), and _____ (the "Awardee").

WHEREAS, the Company desires to provide the Awardee an incentive to participate in the success and growth of the Company through the opportunity to earn a proprietary interest in the Company;

WHEREAS, to give effect to the foregoing intentions, the Company desires to grant the Awardee the right to receive shares of the Company's common stock, par value $0.10 per share (the "Common Stock"), pursuant to Section 9 of the 2011 Equity Incentive Plan of the Company (the "Plan"), subject to the terms and conditions set forth herein; and

WHEREAS, capitalized terms not otherwise defined herein or in Exhibit A hereto shall have the meanings ascribed thereto in the Plan.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the parties hereto agree as follows:

1. Award. Subject to the terms and conditions set forth in this Agreement, and as otherwise provided in the Plan, the Company shall issue and deliver to the Awardee the number of shares of Common Stock, if any, earned in accordance with Exhibit A (the "Performance Shares") in April 2022, but in no event later than April 15, 2022 (the "Vesting Date"), provided that a determination has been made by the Board or the Committee that the performance targets and conditions set forth in Exhibit A have been achieved, and at what levels those performance targets and conditions have been achieved (by reference to Exhibit A) (a "Determination"), and provided further that the Awardee is in the employ of the Company or its subsidiaries on the Vesting Date.

2. Incorporation by Reference, Etc. The provisions of the Plan are hereby incorporated herein by reference. Except as otherwise expressly set forth herein, this Agreement shall be construed in accordance with the provisions of the Plan and any interpretations, amendments, rules and regulations promulgated by the Committee from time to time pursuant to the Plan. Any capitalized terms not otherwise defined in this Agreement shall have the definitions set forth in the Plan. The Committee shall have final authority to interpret and construe the Plan and this Agreement and to make any and all determinations under them, and its

decision shall be binding and conclusive upon the Awardee and his or her legal representative in respect of any questions arising under the Plan or this Agreement. By signing this Agreement, Awardee acknowledges that he or she has had an opportunity to review the Plan and agrees to be bound by all the terms and provisions of the Plan (and this Agreement).

3. Termination of Employment Due to Death, Disability or Retirement. In the event that Awardee's employment with the Company and/or its subsidiaries terminates due to Awardee's death, Disability or Retirement (i) prior to a Determination, then the performance targets in Exhibit A shall be deemed to have been achieved at target, and the conditions set forth in Exhibit A shall be deemed to have been satisfied, and, therefore, the Target Number of Performance Shares (as set forth in Exhibit A) shall immediately vest and be delivered to the Awardee (or Awardee's estate, as applicable) within 10 days following the date of such termination of employment, provided that if such termination of employment occurs on or prior to the date on which 50% of the Performance Period (as set forth in Exhibit A) has elapsed, only 50% of the Target Number of Performance Shares shall immediately vest and be so delivered or (ii) after a Determination, then any Performance Shares that are determined to have been earned by Awardee in accordance with Exhibit A shall, to the extent not previously delivered to Awardee, vest and be delivered to Awardee (or Awardee's estate, as applicable) within 10 days following the date of such termination of employment.

4. Termination of Service. Except as otherwise provided in Sections 3 above or 5 below, upon termination of the Awardee's employment with the Company and its subsidiaries, this Award shall terminate and all of Awardee's rights to receive Performance Shares and dividend equivalents otherwise credited pursuant to Section 6 below shall be forfeited immediately.

5. Termination and Change in Control.

(a) Prior to Determination of Performance. Notwithstanding any provision herein to the contrary, if a Change in Control occurs prior to a Determination, then immediately prior to such Change in Control, the Target Number of Performance Shares (as set forth in Exhibit A) shall automatically convert into service-based Performance Shares, and such service-based Performance Shares shall vest and be immediately delivered to the Awardee on the Vesting Date (without regard to achievement of any of the Performance Requirements set forth on Exhibit A), provided that the Awardee is in the employ of the Company or its subsidiaries on the Vesting Date. Notwithstanding any provision herein to the contrary, in the event that an Involuntary Termination Event occurs either (i) within six (6) months prior to or (ii) within one (1) year following the occurrence of a Change in Control, the outstanding unvested service-based Performance Shares shall immediately become fully vested and be immediately delivered to the Awardee (in the case of an Involuntary Termination occurring prior to the occurrence of a Change in Control, such delivery shall be made immediately prior to the occurrence of the Change in Control, and in the case of an Involuntary Termination occurring after a Change in Control, such delivery shall be made immediately following the occurrence of the Involuntary Termination).

(b) After Determination of Performance. In the event that after a Determination, an Involuntary Termination Event and a Change in Control occur, then the number of Performance Shares determined to have been earned shall immediately vest and shall be immediately delivered to the Awardee.

(c) Involuntary Termination Event. The term "Involuntary Termination Event" shall mean (i) the involuntary termination of the Awardee's employment with the Company or any of its subsidiaries (other than for Cause, death or Disability) or (ii) the Awardee's resignation of employment with the Company or any of its subsidiaries for Good Reason.

(d) Good Reason. The term "Good Reason" shall mean the occurrence of any of the following without the Awardee's prior written consent: (i) a material reduction in the Awardee's then current base salary or target bonus percentage, (ii) a material diminution of the Awardee's duties or responsibilities, (iii) the assignment to the Awardee of duties or responsibilities which are materially inconsistent with the Awardee's previous duties or responsibilities, or (iv) relocation of the Awardee's principal work location to a location more than thirty (30) miles from the Awardee's previous principal work location; provided, however, that no such occurrence shall constitute Good Reason unless the Awardee provides the Company with written notice of the matter within thirty (30) days after the Awardee first has knowledge of the matter and, in the case of clauses (i), (ii) or (iii) hereof, the Company fails to cure such matter within ten (10) days after its receipt of such notice.

6. Dividend Equivalents. The Company shall credit the Awardee in respect of each Performance Share (and each Dividend Equivalent Share (or fraction thereof)) subject to this Award with dividend equivalents in the form of a number of shares of Common Stock (including any fractional shares) (the "Dividend Equivalent Shares") equal to (i) the amount of each dividend (including extraordinary dividends if so determined by the Committee) declared to other stockholders of the Company in respect of one share of Common Stock divided by (ii) the Fair Market Value of a share of Common Stock on the payment date for the applicable dividend. On the date that Performance Shares are delivered to the Awardee hereunder (whether pursuant to Sections 1, 3 or 5), the Dividend Equivalent Shares in respect of the aggregate number of delivered Performance Shares shall also be delivered to the Awardee, with the aggregate number of such Dividend Equivalent Shares being rounded down to the nearest whole share (but, in any event, no fewer than one share). No dividend equivalents shall be accrued for the benefit of the Awardee with respect to record dates occurring prior to the Award Date, or with respect to record dates occurring on or after the date, if any, on which the Awardee's rights to receive Performance Shares are forfeited.

7. Transfer Restrictions. Prior to delivery of any Common Stock with respect to the Performance Shares or the Dividend Equivalent Shares, the Awardee shall not be deemed to have any ownership or stockholder rights (including without limitation dividend and voting rights) with respect to such shares, nor may the Awardee sell, assign, pledge or otherwise transfer (voluntarily or involuntarily) this Award, or any of the Performance Shares or any of the Dividend Equivalent Shares prior to delivery thereof.

8. Changes in Capitalization. In the event of (a) any dividend (other than regular cash dividends) or other distribution (whether in the form of cash, shares of Common Stock, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, split-off, spin-off, combination, repurchase or exchange of shares of Common Stock or other securities of the Company, issuance of warrants or other rights to acquire shares of Common Stock or other securities of the Company, or other similar corporate transaction or event that affects the shares of Common Stock, or (b) unusual or nonrecurring events affecting the Company, any Affiliate, or the financial statements of the Company or any Affiliate, or changes in applicable rules, rulings, regulations or other requirements of any governmental body or securities exchange or inter-dealer quotation service, accounting principles or law, such that in any case an adjustment to this Award is determined by the Committee in its sole discretion to be necessary or appropriate, then this Award shall be adjusted in such manner as the Committee may deem equitable in accordance with Section 12 of the Plan.

9. Government Regulations. Notwithstanding anything contained herein to the contrary, the Company's obligation to issue or deliver the Performance Shares (or Dividend Equivalent Shares) or any certificates evidencing such shares shall be subject to the terms of all applicable laws, rules and regulations and to such approvals by any governmental agencies or national securities exchanges as may be required.

10. Withholding Taxes. Awardee shall be required to pay to the Company or its subsidiary, and the Company or its subsidiary shall have the right (but not the obligation) and is hereby authorized to withhold from amounts payable and/or property deliverable to the Awardee, the amount of any required withholding taxes in respect of the Performance Shares and the Dividend Equivalent Shares, or any other payment or transfer under the Award, and to take such other action as may be necessary in the opinion of the Committee or the Company to satisfy all obligations for the payment of such withholding taxes.

11. Awardee Representations. The Awardee has reviewed with his or her own tax advisors the federal, state, local and foreign tax consequences of the transactions contemplated by this Agreement. The Awardee is relying solely on such advisors and not on any statements or representations of the Company or any of its agents, if any, made to the Awardee. The Awardee understands that the Awardee (and, subject to Section 10 above, not the Company) shall be responsible for the Awardee's own tax liability arising as a result of the transactions contemplated by this Agreement.

12. Clawback/Forfeiture. The Committee may in its sole discretion cancel this Award if the Awardee, without the consent of the Company, while employed by or providing services to the Company or any Affiliate or after termination of such employment or service, violates a non-competition, non-solicitation, non-disparagement, non-disclosure covenant or agreement or otherwise has engaged in or engages in activity that is in conflict with or adverse to the interest of the Company or any Affiliate, including fraud or conduct contributing to any financial restatements or irregularities, as determined by the Committee in its sole discretion. If the Awardee otherwise has engaged in or engages in any activity referred to in the preceding sentence, as determined by the Committee in its sole discretion, the Awardee will forfeit any

compensation, gain or other value realized thereafter on the vesting or settlement of this Award, the sale or other transfer of this Award, or the sale of shares of Common Stock acquired in respect of this Award, and must promptly repay such amounts to the Company. If the Awardee receives any amount in excess of what the Awardee should have received under the terms of this Award for any reason (including without limitation by reason of a financial restatement, mistake in calculations or other administrative error), all as determined by the Committee in its sole discretion, then the Awardee shall be required to promptly repay any such excess amount to the Company. To the extent required by applicable law (including without limitation Section 302 of the Sarbanes-Oxley Act of 2002 and Section 954 of the Dodd Frank Wall Street Reform and Consumer Protection Act) and/or the rules and regulations of NASDAQ or other securities exchange or inter-dealer quotation system on which the Common Stock is listed or quoted, or if so required pursuant to a written policy adopted by the Company, this Award shall be subject (including on a retroactive basis) to clawback, forfeiture or similar requirements (and such requirements shall be deemed incorporated by reference into this Award and this Agreement). In the event that this Section 12 and/or such written policy is deemed to be unenforceable, then the award of Performance Shares shall be deemed to be unenforceable due to the lack of adequate consideration.

13. Employment. Neither this Agreement nor any action taken hereunder shall be construed as giving the Awardee any right of continuing employment by the Company or its subsidiaries.

14. Notices. Notices or communications to be made hereunder shall be in writing and shall be delivered in person, by registered mail, by confirmed facsimile or by a reputable overnight courier service to the Company at its principal office or to the Awardee at his or her address contained in the records of the Company.

15. Governing Law. This Agreement shall be construed under the laws of the State of Delaware, without regard to conflict of laws principles.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter of this Agreement. Notwithstanding the foregoing, this Agreement and the Award made hereby shall be subject to the terms of the Plan. In the event of a conflict between this Agreement and the Plan, the terms and conditions of the Plan shall control.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Company and the Awardee and their respective permitted successors, assigns, heirs, beneficiaries and representatives. This Agreement is personal to the Awardee and may not be assigned by the Awardee without the prior written consent of the Company. Any attempted assignment in violation of this Section shall be null and void.

18. Amendment. This Agreement may be amended or modified only as provided in Section 14 of the Plan or by a written instrument executed by both the Company and the Awardee.

19. Survivorship. This Agreement shall continue in effect until there are no further rights or obligations of the parties outstanding hereunder and shall not be terminated by either party without the express written consent of both parties.

* * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused their duly authorized officer to execute this Agreement as of the date first written above.

THE CHILDREN'S PLACE, INC.

By: __
Name: Leah Swan
Title: Senior Vice President, Human Resources

AWARDEE

By: __
Name:

Date:__

Exhibit A

(a) Awardee's Name: _____

(b) Award Date: _____, 20___

(c) Performance Period: the three (3) fiscal years of the Company commencing on February 3, 2019 and ending on January 29, 2022 ("Fiscal Years 2019-2021")

(d) Target Number of Performance Shares available to be earned: _____

(e) Maximum Number of Performance Shares available to be earned: 250% of the Target Number of Performance Shares set forth above

[Continued on next page.]

(f) Performance Requirements: Subject to the terms and conditions set forth in the Performance-Based Restricted Stock Unit Award Agreement, the Awardee shall earn the number of Performance Shares determined in clauses (1), (2), (3) and (4) below.

(1) Adjusted EPS – The Awardee shall earn fifty percent (50%) of the percentage of the Target Number of Performance Shares by reference to the cumulative Adjusted EPS achieved for Fiscal Years 2019-2021 as set forth in the following table. If the sum of Adjusted EPS achieved for Fiscal Years 2019-2021 falls between the thresholds set forth in the following table, the percentage of the Target Number of Performance Shares to be earned shall be determined by linear interpolation:

Sum of Adjusted EPS for Fiscal Years 2019-2021	Percentage of the Target Number of Performance Shares to be Earned
$[____] or Greater	200%
$[____]	190%
$[____]	180%
$[____]	170%
$[____]	160%
$[____]	150%
$[____]	140%
$[____]	130%
$[____]	120%
$[____]	110%
$[____]	100% (Target)
$[____]	90%
$[____]	80%
$[____]	70%
$[____]	60%
$[____]	50%
$[____]	40%
$[____]	30%
$[____]	20%
$[____]	10%
$[____] or less	0

(2) Adjusted Operating Margin Expansion – The Awardee shall earn twenty-five percent (25%) of the percentage of the Target Number of Performance Shares by reference to the Adjusted Operating Margin Expansion achieved (measured in basis points) from the beginning of Fiscal Year 2019 to the end of Fiscal Year 2021 as set forth in the following table. If the Adjusted Operating Margin Expansion achieved as aforesaid falls between the thresholds set forth in the following table, the percentage of the Target Number of Performance Shares to be earned shall be determined by linear interpolation:

Adjusted Operating Margin Expansion from the beginning of Fiscal Year 2019 to the end of Fiscal Year 2021 (in basis points)	Percentage of the Target Number of Performance Shares to be Earned
[___] or greater	200%
[___]	190%
[___]	180%
[___]	170%
[___]	160%
[___]	150%
[___]	140%
[___]	130%
[___]	120%
[___]	110%
[___]	100% (Target)
[___]	90%
[___]	80%
[___]	70%
[___]	60%
[___]	50%
[___]	40%
[___]	30%
[___]	20%
[___]	10%
[___] or less	0

(3) Adjusted ROIC – The Awardee shall earn twenty-five percent (25%) of the percentage of the Target Number of Performance Shares by reference to the Adjusted ROIC achieved for Fiscal Year 2021 as set forth in the following table. If the Adjusted ROIC achieved for Fiscal Year 2021 falls between the thresholds set forth in the following table, the percentage of the Target Number of Performance Shares to be earned shall be determined by linear interpolation:

Adjusted ROIC for Fiscal Year 2021	Percentage of the Target Number of Performance Shares to be Earned
[___]% or greater	200%
[___]%	190%
[___]%	180%
[___]%	170%
[___]%	160%
[___]%	150%
[___]%	140%
[___]%	130%
[___]%	120%
[___]%	110%
[___]%	100% (Target)
[___]%	90%
[___]%	80%
[___]%	70%
[___]%	60%
[___]%	50%
[___]%	40%
[___]%	30%
[___]%	20%
[___]%	10%
[___]% or less	0

(4) The number of Performance Shares otherwise earned as determined pursuant to the tables set forth in subsections (f)(1), (f)(2) and (f)(3) above shall be adjusted (up, down or not at all) by reference to the following:

Company Fiscal 2021 Adjusted ROIC Ranking Compared to Peer Group*	A Participant will Receive the Following Percentage of PRSUs Otherwise Earned Based on the Adjusted EPS, Adjusted Operating Margin Expansion and Adjusted ROIC Achieved
1st – 2nd	125%
3rd – 14th	100% (Target)
15th – 16th	75%

* Adjusted ROIC for companies in the Company's Peer Group will be calculated in the same way as calculated for the Company. The Company's Peer Group is as listed in the Company's Proxy Statement.

(g) Definitions:

"Adjusted EPS" shall mean the Company's earnings per diluted share for the applicable fiscal year, adjusted to exclude one-time or unusual items as the Board or the Committee may determine, including without limitation, (i) any effect of a change in accounting principles and of Accounting Standards Update (ASU) 2016-09 issued by the Financial Accounting Standards Board (FASB) (rules for income tax impact on share-based compensation); (ii) those items that the Company excludes when it reports its "non-GAAP" adjusted EPS; and (iii) any effect of a change in accounting principles and of Accounting Standards Update (ASU) 2016-09 issued by the Financial Accounting Standards Board (FASB) (rules for income tax impact on share-based compensation).

"Adjusted Operating Margin Expansion" shall mean the Company's cumulative increase in Adjusted Operating Margin (measured in basis points) between the Company's Adjusted Operating Margin for the fiscal year ended February 2, 2019 (that is [--]%) and the Company's Adjusted Operating Margin for the fiscal year ending January 29, 2022 ("Fiscal 2021").

"Adjusted Operating Margin" shall mean the Company's operating margin for the applicable fiscal year, expressed as a percentage and determined by dividing the Company's Adjusted Operating Income for such fiscal year by the Company's net sales for such fiscal year.

"Adjusted Operating Income" shall mean the Company's operating income for a fiscal year, adjusted to exclude one-time or unusual items as the Board or the Committee may determine, including without limitation, (i) any effect of a change in accounting principles; (ii) those items that the Company excludes when it reports its "non-GAAP" adjusted operating income; and (iii) any effect of a change in accounting principles. "Adjusted Provision for Income Taxes" shall mean the Company's provision for income taxes for Fiscal 2021 adjusted to exclude the income tax effect of the one-time or unusual items that the Company excludes when it reports its "non-GAAP" adjusted operating income and shall also exclude any effect of a change in accounting principles and of Accounting Standards Update (ASU) 2016-09 issued by the Financial Accounting Standards Board (FASB) (rules for income tax impact on share-based compensation).

"Adjusted ROIC" shall mean (i) the Company's Adjusted Operating Income for Fiscal 2021 multiplied by (ii) (1 – Adjusted Tax Rate for Fiscal 2021), and then dividing the resultant by (iii) the Company's Average Invested Capital for Fiscal 2021.

"Adjusted Tax Rate for Fiscal 2021" shall mean (i) the Company's Adjusted Provision for Income Taxes for Fiscal 2021 divided by (ii) the Company's Adjusted Operating Income for Fiscal 2021 minus the Company's interest expense or plus the Company's interest income, as applicable, for Fiscal 2021, all expressed as a decimal carried to three (3) decimal places.

"Average Invested Capital" shall mean (i) the Company's stockholders' equity at the beginning of Fiscal 2021 plus (ii) the Company's long-term debt at the beginning of Fiscal 2021 plus (iii) the Company's stockholders' equity at the end of Fiscal 2021 plus (iv) the Company's long-term debt at the end of Fiscal 2021, and then dividing the sum by (v) two (2).

The Awardee has participated in the development of the Company's operating plan for Fiscal Years 2019-2021. The targets set forth in the tables set forth above in clauses (f)(1), (f)(2) and (f)(3) are based on such plan.

___ (Awardee Initials)

___ (Company Representative)

EXHIBIT 10.2
Below SVP

PERFORMANCE-BASED RESTRICTED STOCK UNIT AWARD AGREEMENT

THE CHILDREN'S PLACE, INC.

This Performance-Based Restricted Stock Unit Award Agreement (the "Agreement"), effective as of _____, 20___ (the "Award Date"), is entered into by and between The Children's Place, Inc., a Delaware corporation (the "Company"), and _____ (the "Awardee").

WHEREAS, the Company desires to provide the Awardee an incentive to participate in the success and growth of the Company through the opportunity to earn a proprietary interest in the Company;

WHEREAS, to give effect to the foregoing intentions, the Company desires to grant the Awardee the right to receive shares of the Company's common stock, par value $0.10 per share (the "Common Stock"), pursuant to Section 9 of the 2011 Equity Incentive Plan of the Company (the "Plan"), subject to the terms and conditions set forth herein; and

WHEREAS, capitalized terms not otherwise defined herein or in Exhibit A hereto shall have the meanings ascribed thereto in the Plan.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the parties hereto agree as follows:

1. Award. Subject to the terms and conditions set forth in this Agreement, and as otherwise provided in the Plan, the Company shall issue and deliver to the Awardee the number of shares of Common Stock, if any, earned in accordance with Exhibit A (the "Performance Shares") in April 2022, but in no event later than April 15, 2022 (the "Vesting Date"), provided that a determination has been made by the Board or the Committee that the performance targets and conditions set forth in Exhibit A have been achieved, and at what levels those performance targets and conditions have been achieved (by reference to Exhibit A) (a "Determination"), and provided further that the Awardee is in the employ of the Company or its subsidiaries on the Vesting Date.

2. Incorporation by Reference, Etc. The provisions of the Plan are hereby incorporated herein by reference. Except as otherwise expressly set forth herein, this Agreement shall be construed in accordance with the provisions of the Plan and any interpretations, amendments, rules and regulations promulgated by the Committee from time to time pursuant to the Plan. Any capitalized terms not otherwise defined in this Agreement shall have the definitions set forth in the Plan. The Committee shall have final authority to interpret and

construe the Plan and this Agreement and to make any and all determinations under them, and its decision shall be binding and conclusive upon the Awardee and his or her legal representative in respect of any questions arising under the Plan or this Agreement. By signing this Agreement, Awardee acknowledges that he or she has had an opportunity to review the Plan and agrees to be bound by all the terms and provisions of the Plan (and this Agreement).

3. Termination of Employment Due to Death, Disability or Retirement. In the event that Awardee's employment with the Company and/or its subsidiaries terminates due to Awardee's death, Disability or Retirement (i) prior to a Determination, then the performance targets in Exhibit A shall be deemed to have been achieved at target, and the conditions set forth in Exhibit A shall be deemed to have been satisfied, and, therefore, the Target Number of Performance Shares (as set forth in Exhibit A) shall immediately vest and be delivered to the Awardee (or Awardee's estate, as applicable) within 10 days following the date of such termination of employment, provided that if such termination of employment occurs on or prior to the date on which 50% of the Performance Period (as set forth in Exhibit A) has elapsed, only 50% of the Target Number of Performance Shares shall immediately vest and be so delivered or (ii) after a Determination, then any Performance Shares that are determined to have been earned by Awardee in accordance with Exhibit A shall, to the extent not previously delivered to Awardee, vest and be delivered to Awardee (or Awardee's estate, as applicable) within 10 days following the date of such termination of employment.

4. Termination of Service. Except as otherwise provided in Sections 3 above or 5 below, upon termination of the Awardee's employment with the Company and its subsidiaries, this Award shall terminate and all of Awardee's rights to receive Performance Shares and dividend equivalents otherwise credited pursuant to Section 6 below shall be forfeited immediately.

5. Termination and Change in Control.

(a) Prior to Determination of Performance. Notwithstanding any provision herein to the contrary, if a Change in Control occurs prior to a Determination, then immediately prior to such Change in Control, the Target Number of Performance Shares (as set forth in Exhibit A) shall automatically convert into service-based Performance Shares, and such service-based Performance Shares shall vest and be immediately delivered to the Awardee on the Vesting Date (without regard to achievement of any of the Performance Requirements set forth on Exhibit A), provided that the Awardee is in the employ of the Company or its subsidiaries on the Vesting Date. Notwithstanding any provision herein to the contrary, in the event that an Involuntary Termination Event occurs within one (1) year following the occurrence of a Change in Control, the outstanding unvested service-based Performance Shares shall immediately become fully vested and be immediately delivered to the Awardee.

(b) After Determination of Performance. In the event that after a Determination, an Involuntary Termination Event and a Change in Control occur, then the number of Performance Shares determined to have been earned shall immediately vest and shall be immediately delivered to the Awardee.

(c) Involuntary Termination Event. The term "Involuntary Termination Event" shall mean (i) the involuntary termination of the Awardee's employment with the Company or any of its subsidiaries (other than for Cause, death or Disability) or (ii) the Awardee's resignation of employment with the Company or any of its subsidiaries for Good Reason.

(d) Good Reason. The term "Good Reason" shall mean the occurrence of any of the following without the Awardee's prior written consent: (i) a material reduction in the Awardee's then current base salary or target bonus percentage, (ii) a material diminution of the Awardee's duties or responsibilities, (iii) the assignment to the Awardee of duties or responsibilities which are materially inconsistent with the Awardee's previous duties or responsibilities, or (iv) relocation of the Awardee's principal work location to a location more than thirty (30) miles from the Awardee's previous principal work location; provided, however, that no such occurrence shall constitute Good Reason unless the Awardee provides the Company with written notice of the matter within thirty (30) days after the Awardee first has knowledge of the matter and, in the case of clauses (i), (ii) or (iii) hereof, the Company fails to cure such matter within ten (10) days after its receipt of such notice.

6. Dividend Equivalents. The Company shall credit the Awardee in respect of each Performance Share (and each Dividend Equivalent Share (or fraction thereof)) subject to this Award with dividend equivalents in the form of a number of shares of Common Stock (including any fractional shares) (the "Dividend Equivalent Shares") equal to (i) the amount of each dividend (including extraordinary dividends if so determined by the Committee) declared to other stockholders of the Company in respect of one share of Common Stock divided by (ii) the Fair Market Value of a share of Common Stock on the payment date for the applicable dividend. On the date that Performance Shares are delivered to the Awardee hereunder (whether pursuant to Sections 1, 3 or 5), the Dividend Equivalent Shares in respect of the aggregate number of delivered Performance Shares shall also be delivered to the Awardee, with the aggregate number of such Dividend Equivalent Shares being rounded down to the nearest whole share (but, in any event, no fewer than one share). No dividend equivalents shall be accrued for the benefit of the Awardee with respect to record dates occurring prior to the Award Date, or with respect to record dates occurring on or after the date, if any, on which the Awardee's rights to receive Performance Shares are forfeited.

7. Transfer Restrictions. Prior to delivery of any Common Stock with respect to the Performance Shares or the Dividend Equivalent Shares, the Awardee shall not be deemed to have any ownership or stockholder rights (including without limitation dividend and voting rights) with respect to such shares, nor may the Awardee sell, assign, pledge or otherwise transfer (voluntarily or involuntarily) this Award, or any of the Performance Shares or any of the Dividend Equivalent Shares prior to delivery thereof.

8. Changes in Capitalization. In the event of (a) any dividend (other than regular cash dividends) or other distribution (whether in the form of cash, shares of Common Stock, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, split-off, spin-off, combination, repurchase or

exchange of shares of Common Stock or other securities of the Company, issuance of warrants or other rights to acquire shares of Common Stock or other securities of the Company, or other similar corporate transaction or event that affects the shares of Common Stock, or (b) unusual or nonrecurring events affecting the Company, any Affiliate, or the financial statements of the Company or any Affiliate, or changes in applicable rules, rulings, regulations or other requirements of any governmental body or securities exchange or inter-dealer quotation service, accounting principles or law, such that in any case an adjustment to this Award is determined by the Committee in its sole discretion to be necessary or appropriate, then this Award shall be adjusted in such manner as the Committee may deem equitable in accordance with Section 12 of the Plan.

9. Government Regulations. Notwithstanding anything contained herein to the contrary, the Company's obligation to issue or deliver the Performance Shares (or Dividend Equivalent Shares) or any certificates evidencing such shares shall be subject to the terms of all applicable laws, rules and regulations and to such approvals by any governmental agencies or national securities exchanges as may be required.

10. Withholding Taxes. Awardee shall be required to pay to the Company or its subsidiary, and the Company or its subsidiary shall have the right (but not the obligation) and is hereby authorized to withhold from amounts payable and/or property deliverable to the Awardee, the amount of any required withholding taxes in respect of the Performance Shares and the Dividend Equivalent Shares, or any other payment or transfer under the Award, and to take such other action as may be necessary in the opinion of the Committee or the Company to satisfy all obligations for the payment of such withholding taxes.

11. Awardee Representations. The Awardee has reviewed with his or her own tax advisors the federal, state, local and foreign tax consequences of the transactions contemplated by this Agreement. The Awardee is relying solely on such advisors and not on any statements or representations of the Company or any of its agents, if any, made to the Awardee. The Awardee understands that the Awardee (and, subject to Section 10 above, not the Company) shall be responsible for the Awardee's own tax liability arising as a result of the transactions contemplated by this Agreement.

12. Clawback/Forfeiture. The Committee may in its sole discretion cancel this Award if the Awardee, without the consent of the Company, while employed by or providing services to the Company or any Affiliate or after termination of such employment or service, violates a non-competition, non-solicitation, non-disparagement, non-disclosure covenant or agreement or otherwise has engaged in or engages in activity that is in conflict with or adverse to the interest of the Company or any Affiliate, including fraud or conduct contributing to any financial restatements or irregularities, as determined by the Committee in its sole discretion. If the Awardee otherwise has engaged in or engages in any activity referred to in the preceding sentence, as determined by the Committee in its sole discretion, the Awardee will forfeit any compensation, gain or other value realized thereafter on the vesting or settlement of this Award, the sale or other transfer of this Award, or the sale of shares of Common Stock acquired in respect of this Award, and must promptly repay such amounts to the Company. If the Awardee

receives any amount in excess of what the Awardee should have received under the terms of this Award for any reason (including without limitation by reason of a financial restatement, mistake in calculations or other administrative error), all as determined by the Committee in its sole discretion, then the Awardee shall be required to promptly repay any such excess amount to the Company. To the extent required by applicable law (including without limitation Section 302 of the Sarbanes-Oxley Act of 2002 and Section 954 of the Dodd Frank Wall Street Reform and Consumer Protection Act) and/or the rules and regulations of NASDAQ or other securities exchange or inter-dealer quotation system on which the Common Stock is listed or quoted, or if so required pursuant to a written policy adopted by the Company, this Award shall be subject (including on a retroactive basis) to clawback, forfeiture or similar requirements (and such requirements shall be deemed incorporated by reference into this Award and this Agreement). In the event that this Section 12 and/or such written policy is deemed to be unenforceable, then the award of Performance Shares shall be deemed to be unenforceable due to the lack of adequate consideration.

13. Employment. Neither this Agreement nor any action taken hereunder shall be construed as giving the Awardee any right of continuing employment by the Company or its subsidiaries.

14. Notices. Notices or communications to be made hereunder shall be in writing and shall be delivered in person, by registered mail, by confirmed facsimile or by a reputable overnight courier service to the Company at its principal office or to the Awardee at his or her address contained in the records of the Company.

15. Governing Law. This Agreement shall be construed under the laws of the State of Delaware, without regard to conflict of laws principles.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter of this Agreement. Notwithstanding the foregoing, this Agreement and the Award made hereby shall be subject to the terms of the Plan. In the event of a conflict between this Agreement and the Plan, the terms and conditions of the Plan shall control.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Company and the Awardee and their respective permitted successors, assigns, heirs, beneficiaries and representatives. This Agreement is personal to the Awardee and may not be assigned by the Awardee without the prior written consent of the Company. Any attempted assignment in violation of this Section shall be null and void.

18. Amendment. This Agreement may be amended or modified only as provided in Section 14 of the Plan or by a written instrument executed by both the Company and the Awardee.

19. Survivorship. This Agreement shall continue in effect until there are no further rights or obligations of the parties outstanding hereunder and shall not be terminated by either party without the express written consent of both parties.

* * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused their duly authorized officer to execute this Agreement as of the date first written above.

THE CHILDREN'S PLACE, INC.

By: __
Name: Leah Swan
Title: Senior Vice President, Human Resources

AWARDEE

By: __
Name:

Date:__

Exhibit A

(a) Awardee's Name: _____

(b) Award Date: _____, 20___

(c) Performance Period: the three (3) fiscal years of the Company commencing on February 3, 2019 and ending on January 29, 2022 ("Fiscal Years 2019-2021")

(d) Target Number of Performance Shares available to be earned: _____

(e) Maximum Number of Performance Shares available to be earned: 250% of the Target Number of Performance Shares set forth above

[Continued on next page.]

(f) Performance Requirements: Subject to the terms and conditions set forth in the Performance-Based Restricted Stock Unit Award Agreement, the Awardee shall earn the number of Performance Shares determined in clauses (1), (2), (3) and (4) below.

(1) Adjusted EPS – The Awardee shall earn fifty percent (50%) of the percentage of the Target Number of Performance Shares by reference to the cumulative Adjusted EPS achieved for Fiscal Years 2019-2021 as set forth in the following table. If the sum of Adjusted EPS achieved for Fiscal Years 2019-2021 falls between the thresholds set forth in the following table, the percentage of the Target Number of Performance Shares to be earned shall be determined by linear interpolation:

Sum of Adjusted EPS for Fiscal Years 2019-2021	Percentage of the Target Number of Performance Shares to be Earned
$[____] or Greater	200%
$[____]	190%
$[____]	180%
$[____]	170%
$[____]	160%
$[____]	150%
$[____]	140%
$[____]	130%
$[____]	120%
$[____]	110%
$[____]	100% (Target)
$[____]	90%
$[____]	80%
$[____]	70%
$[____]	60%
$[____]	50%
$[____]	40%
$[____]	30%
$[____]	20%
$[____]	10%
$[____] or less	0

(2) Adjusted Operating Margin Expansion – The Awardee shall earn twenty-five percent (25%) of the percentage of the Target Number of Performance Shares by reference to the Adjusted Operating Margin Expansion achieved (measured in basis points) from the beginning of Fiscal Year 2019 to the end of Fiscal Year 2021 as set forth in the following table. If the Adjusted Operating Margin Expansion achieved as aforesaid falls between the thresholds set forth in the following table, the percentage of the Target Number of Performance Shares to be earned shall be determined by linear interpolation:

Adjusted Operating Margin Expansion from the beginning of Fiscal Year 2019 to the end of Fiscal Year 2021 (in basis points)	Percentage of the Target Number of Performance Shares to be Earned
[___] or greater	200%
[___]	190%
[___]	180%
[___]	170%
[___]	160%
[___]	150%
[___]	140%
[___]	130%
[___]	120%
[___]	110%
[___]	100% (Target)
[___]	90%
[___]	80%
[___]	70%
[___]	60%
[___]	50%
[___]	40%
[___]	30%
[___]	20%
[___]	10%
[___] or less	0

(3) Adjusted ROIC – The Awardee shall earn twenty-five percent (25%) of the percentage of the Target Number of Performance Shares by reference to the Adjusted ROIC achieved for Fiscal Year 2021 as set forth in the following table. If the Adjusted ROIC achieved for Fiscal Year 2021 falls between the thresholds set forth in the following table, the percentage of the Target Number of Performance Shares to be earned shall be determined by linear interpolation:

Adjusted ROIC for Fiscal Year 2021	Percentage of the Target Number of Performance Shares to be Earned
[___]% or greater	200%
[___]%	190%
[___]%	180%
[___]%	170%
[___]%	160%
[___]%	150%
[___]%	140%
[___]%	130%
[___]%	120%
[___]%	110%
[___]%	100% (Target)
[___]%	90%
[___]%	80%
[___]%	70%
[___]%	60%
[___]%	50%
[___]%	40%
[___]%	30%
[___]%	20%
[___]%	10%
[___]% or less	0

(4) The number of Performance Shares otherwise earned as determined pursuant to the tables set forth in subsections (f)(1), (f)(2) and (f)(3) above shall be adjusted (up, down or not at all) by reference to the following:

Company Fiscal 2021 Adjusted ROIC Ranking Compared to Peer Group*	A Participant will Receive the Following Percentage of PRSUs Otherwise Earned Based on the Adjusted EPS, Adjusted Operating Margin Expansion and Adjusted ROIC Achieved
1st – 2nd	125%
3rd – 14th	100% (Target)
15th – 16th	75%

* Adjusted ROIC for companies in the Company's Peer Group will be calculated in the same way as calculated for the Company. The Company's Peer Group is as listed in the Company's Proxy Statement.

(g) Definitions:

"Adjusted EPS" shall mean the Company's earnings per diluted share for the applicable fiscal year, adjusted to exclude one-time or unusual items as the Board or the Committee may determine, including without limitation, (i) any effect of a change in accounting principles and of Accounting Standards Update (ASU) 2016-09 issued by the Financial Accounting Standards Board (FASB) (rules for income tax impact on share-based compensation); (ii) those items that the Company excludes when it reports its "non-GAAP" adjusted EPS; and (iii) any effect of a change in accounting principles and of Accounting Standards Update (ASU) 2016-09 issued by the Financial Accounting Standards Board (FASB) (rules for income tax impact on share-based compensation).

"Adjusted Operating Margin Expansion" shall mean the Company's cumulative increase in Adjusted Operating Margin (measured in basis points) between the Company's Adjusted Operating Margin for the fiscal year ended February 2, 2019 (that is [--]%) and the Company's Adjusted Operating Margin for the fiscal year ending January 29, 2022 ("Fiscal 2021").

"Adjusted Operating Margin" shall mean the Company's operating margin for the applicable fiscal year, expressed as a percentage and determined by dividing the Company's Adjusted Operating Income for such fiscal year by the Company's net sales for such fiscal year.

"Adjusted Operating Income" shall mean the Company's operating income for a fiscal year, adjusted to exclude one-time or unusual items as the Board or the Committee may determine, including without limitation, (i) any effect of a change in accounting principles; (ii) those items that the Company excludes when it reports its "non-GAAP" adjusted operating income; and (iii) any effect of a change in accounting principles.

"Adjusted Provision for Income Taxes" shall mean the Company's provision for income taxes for Fiscal 2021 adjusted to exclude the income tax effect of the one-time or unusual items that the Company excludes when it reports its "non-GAAP" adjusted operating income and shall also exclude any effect of a change in accounting principles and of Accounting Standards Update (ASU) 2016-09 issued by the Financial Accounting Standards Board (FASB) (rules for income tax impact on share-based compensation).

"Adjusted ROIC" shall mean (i) the Company's Adjusted Operating Income for Fiscal 2021 multiplied by (ii) (1 – Adjusted Tax Rate for Fiscal 2021), and then dividing the resultant by (iii) the Company's Average Invested Capital for Fiscal 2021.

"Adjusted Tax Rate for Fiscal 2021" shall mean (i) the Company's Adjusted Provision for Income Taxes for Fiscal 2021 divided by (ii) the Company's Adjusted Operating Income for Fiscal 2021 minus the Company's interest expense or plus the Company's interest income, as applicable, for Fiscal 2021, all expressed as a decimal carried to three (3) decimal places.

"Average Invested Capital" shall mean (i) the Company's stockholders' equity at the beginning of Fiscal 2021 plus (ii) the Company's long-term debt at the beginning of Fiscal 2021 plus (iii) the Company's stockholders' equity at the end of Fiscal 2021 plus (iv) the Company's long-term debt at the end of Fiscal 2021, and then dividing the sum by (v) two (2).

The Awardee has participated in the development of the Company's operating plan for Fiscal Years 2019-2021. The targets set forth in the tables set forth above in clauses (f)(1), (f)(2) and (f)(3) are based on such plan.

___ (Awardee Initials)

___ (Company Representative)

EXHIBIT 10.3

February 13, 2019

Claudia Lima-Guinehut

Dear Claudia,

On behalf of The Children's Place, it is my pleasure to confirm your promotion to the position of Senior Vice President, Global Merchandising reporting to me. Details of your promotion are as follows:

- EFFECTIVE DATE: February 17, 2019
- ANNUAL BASE SALARY: $375,000.00

- BONUS: You will be eligible to participate in our annual management incentive plan. Your target bonus will be 60% of your annual salary, and, among other things, you must be employed on the date of the bonus payout to be eligible to receive your bonus. Bonus payments are determined by Company performance and factor in personal performance, and are subject to the terms of the Management Incentive Plan. Please review the Annual Management Incentive Plan summary for additional details.

- ANNUAL EQUITY AWARD: Based upon your position with the Company, you will receive an equity award. All equity awards are subject to the Company's 2011 Equity Incentive Plan ("2011 Equity Plan") and must be awarded in accordance with the Company's Policy Regarding the Award of Equity-Based Incentives to Executives Officers and Other Employees (the "Equity Award Policy").

1. Value of Award: An award valued at $1,000,000.00 with the number of shares constituting the award based on the closing stock price on the Grant Date, as defined below.

2. Types of Awards. (i) $500,000 will be in the form of Time-Based RSUs and (ii) $500,000 will be in the form of Performance-Based RSUs.

3. Grant Date. The grant date for these awards will be May 8, 2019 (the "Grant Date).

4. Vesting of Time-Based RSUs. The Time-Based RSUs will vest ratably over three years on each anniversary of the Grant Date, subject to your continued employment on the applicable vesting dates.

5. Earning of Performance-Based RSUs. The Performance-Based RSUs may be earned provided the Company achieves the performance goals to be set by the Compensation Committee for a three-year performance period consisting of fiscal 2019-2021. Subject

to your continued employment with the Company on the delivery date, any earned shares will be delivered to you at the same time in 2022 as earned shares are delivered to other senior executives of the Company.

- BENEFITS: You remain eligible for benefits available to other associates at your level.

- CHANGE IN CONTROL: Subject to your execution and delivery to the Company of a Change in Control Severance Agreement (the "Change in Control Severance Agreement"), you will receive severance if you are terminated other than for Cause (as defined in the Change in Control Severance Agreement) or resign for Good Reason (as defined in the Change in Control Severance Agreement) in anticipation of, or subsequent to, a Change in Control (as defined in the Change in Control Severance Agreement). Under the Change in Control Severance Agreement, the severance period is 18 months. During the severance period, you will continue to be covered under the Company's health plan. The terms of the equity award agreements are subject to change by the Compensation Committee at any time. Unless the Change in Control Severance Agreement is otherwise terminated earlier pursuant to its terms, it will remain in force for two years from the execution thereof and it will renew for additional one year periods unless the Company provides you with notice of nonrenewal at least 90 days prior to the second anniversary date thereof or, if renewed, at least 90 days prior to each subsequent renewal.

- SEVERANCE: In the event that you are terminated by the Company without Cause (as defined in the Change in Control Severance Agreement), the amount you will be entitled to will be the greater of (i) twelve month's severance in the form of salary continuation payments at your then current salary or (ii) the amount available to other associates at your level under the Company's severance guidelines, provided, in all cases, that such severance shall automatically and immediately be reduced by the amount of salary or other like compensation you receive from employment or engagement as an independent contractor, during the severance period, with any other person or entity. Further, the Company agrees to waive the applicable premium cost that you would otherwise be required to pay for continued group health benefit coverage under COBRA for the corresponding period of severance as provided above unless otherwise prohibited under applicable law. All such payments are intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations there under such that no payment made, or benefit provided, to you hereunder shall be subject to an "additional tax" within the meaning of the Code. Receipt of the payments set forth in this paragraph are conditioned upon the execution and delivery of an agreement containing a release of claims, an agreement of confidentiality, and an agreement of non-solicitation and non-competition for a period of 12 months following termination in such form as the Company shall reasonably determine, which release of claims shall, to the extent permitted by law, waive all claims and actions against the Company and its officers, directors, affiliates and such other related parties and entities as the Company chooses to include in the release.

- WITHHOLDING: The Company is authorized to withhold from any payment to be made hereunder to you such amounts for income tax, social security, unemployment compensation, excise taxes and other taxes and penalties as in the Company's judgment is required to comply with applicable laws and regulations.

- 409A COMPLIANCE: Notwithstanding anything in this offer letter to the contrary, if you are a "specified employee" (determined in accordance with Section 409A of the Code and Treasury Regulation Section 1.409A-3(i)(2)) as of the termination of your employment with the Company, and, if any payment, benefit or entitlement provided for in this offer letter or otherwise both (i) constitutes a "deferral of compensation" within the meaning of Section 409A of the Code and (ii) cannot be paid or provided in a manner otherwise provided herein or otherwise without subjecting you to additional tax, interest, and/or penalties under Section 409A of the Code, then any such payment, benefit or entitlement that is payable during the first six months following the date of your termination of employment shall be paid or provided to you (or your estate, if applicable) in a lump sum cash payment (together with interest on such amount during the period of such restriction at a rate, per annum, equal to the applicable federal short-term rate (compounded monthly) in effect under Section 1274(d) of the Code on the date of termination) on the earlier of (x) your death or (y) the first business day of the seventh calendar month immediately following the month in which your termination of employment occurs.

- CONFIDENTIALITY, ETC.: As a condition of your employment, you remain subject to the Company's Confidentiality, Work Product, and Non-solicitation Agreement.

- INDEMNIFICATION/D&O: As an officer of the Company, you will be indemnified on the same terms and conditions, and will be covered by the Company's directors' and officers' insurance coverage as other senior executives of the Company.

- NON-COMPETE: You agree that for a period of twelve (12) months following the date that you are no longer in the employ of the Company or any of its subsidiaries for any reason (the "Separation Date"), you will not, without the express prior written consent of the Company, anywhere, either directly or indirectly, whether alone or as an owner, shareholder, partner, member, joint venturer, officer, director, consultant, independent contractor, agent, employee or otherwise of any company or other business enterprise, assist in, engage in, be connected with or otherwise provide services or advice to, any business that is competitive with that of the Company. A "business that is competitive with that of the Company" is (i) one that designs, manufactures, contracts to manufacture or sells children's apparel, footwear or accessories, or intends so to do, and (ii) without limiting the generality of clause (i) above, any of the following companies, entities, or organizations, or any business enterprise that, directly or indirectly, owns, operates or is affiliated with any of the following companies or brands operated by any of the following companies: Gymboree Group, Inc., Carter's, Inc., Ascena Retail Group, Inc., The Gap, Inc., J. Crew Group, Inc., Target Corporation, Kohl's Corporation, Walmart Inc., Amazon.com,

Inc., Hennes & Mauritz AB (H&M), or Zara SA, or, in any case, any of their respective subsidiaries, affiliates or related businesses (a "Competitive Business"). Notwithstanding the foregoing, nothing herein shall be deemed to prohibit your ownership of less than 1% of the outstanding shares of any publicly traded corporation that conducts a Competitive Business.

You acknowledge and agree that the restrictions on the activities in which you may engage that are set forth above, and the location and period of time for which such restrictions apply, are reasonable and necessary to protect the Company's legitimate business interests. You acknowledge and agree that the Company's business is global and, accordingly, the foregoing restrictions cannot be limited to any particular geographic area. You acknowledge and agree that the foregoing restrictions will not prevent you from earning a livelihood.

In consideration for the Company's agreements in this offer letter, you also acknowledge and agree that, in the event that you are no longer in the employ of the Company or any of its subsidiaries for any reason (whether termination of employment is voluntary or involuntary and whether termination of employment is affected by you or by the Company), the foregoing non-competition agreement will remain in full force and effect, and that the Company would not have entered into this offer letter unless such was the case.

- STOCK OWNERSHIP GUIDELINES: As a senior executive of the Company, you will be subject to stock ownership guidelines adopted from time to time by the Compensation Committee of the Company's Board of Directors. Please refer to the Stock Ownership Guidelines for Senior Executives document.
- GOVERNING LAW: This offer letter shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles.

Unless specifically stated in this offer letter, all terms and conditions of your employment are as provided by the policies and practices of The Children's Place, Inc. and its affiliates as in effect from time to time.

This offer of employment is not to be construed as an employment contract, expressed or implied, and it is specifically understood that your employment is at-will (this means that either you or the Company may terminate your employment at any time with or without cause) and further that there is no intent on the part of the Company or yourself, for continued employment of any specified period of time.

Please indicate your acceptance of and agreement with the foregoing by executing this offer letter and returning a copy to me.

Congratulations on your promotion Claudia! We are confident that you will make a strong contribution to our continued growth and success. Should you have any questions regarding your promotion or compensation, please do not hesitate to reach out to Leah Swan in Human Resources.

Sincerely,

/s/ Jane Elfers
Jane Elfers
President & Chief Executive Officer

Agreed and Accepted:

/s/ Claudia Lima-Guinehut 2/14/19
Claudia Lima-Guinehut Date

EXHIBIT 10.4

As of April 9, 2019

Leah Swan

Dear Leah,

On behalf of The Children's Place, it is my pleasure to confirm your promotion to the position of Chief Administrative Officer reporting to me. Details of your promotion are as follows:

- EFFECTIVE DATE: May 5, 2019
- ANNUAL BASE SALARY: $600,000.00
- BONUS: You will be eligible to participate in our annual management incentive plan. Your target bonus will be 75% of your annual salary, and, among other things, you must be employed on the date of the bonus payout to be eligible to receive your bonus. Bonus payments are determined by Company performance and factor in personal performance, and are subject to the terms of the Management Incentive Plan. Please review the Annual Management Incentive Plan summary for additional details.
- PROMOTION AWARDS: Based upon your position with the Company, you will receive an equity award. All equity awards are subject to the Company's 2011 Equity Incentive Plan ("2011 Equity Plan") and must be awarded in accordance with the Company's Policy Regarding the Award of Equity-Based Incentives to Executives Officers and Other Employees (the "Equity Award Policy").

    1. Value of Award: An award valued at $1,000,000.00 with the number of shares constituting the award based on the closing stock price on the Grant Date, as defined below.

    2. Types of Awards. The award will be in the form of Time-Based RSUs.

    3. Grant Date. The grant date for these awards will be May 8, 2019 (the "Grant Date).

    4. Vesting of Time-Based RSUs. The Time-Based RSUs will vest ratably over two years on each anniversary of the Grant Date, subject to your continued employment on the applicable vesting dates.

    In addition, you will also receive a cash bonus of $250,000, payable in May 2019.

- ANNUAL EQUITY AWARD: In 2020, you will be eligible to receive an equity award under the 2011 Equity Plan at the same time as other associates in the Company, subject to the approval of the Compensation Committee of the Board of Directors and the Equity Award Policy.

- BENEFITS: You remain eligible for benefits available to other associates at your level.

- CHANGE IN CONTROL: Subject to your execution and delivery to the Company of a Change in Control Severance Agreement (the "Change in Control Severance Agreement"), you will receive severance if you are terminated other than for Cause (as defined in the Change in Control Severance Agreement) or resign for Good Reason (as defined in the Change in Control Severance Agreement) in anticipation of, or subsequent to, a Change in Control (as defined in the Change in Control Severance Agreement). Under the Change in Control Severance Agreement, the severance period is 18 months. During the severance period, you will continue to be covered under the Company's health plan. The terms of the equity award agreements are subject to change by the Compensation Committee at any time. Unless the Change in Control Severance Agreement is otherwise terminated earlier pursuant to its terms, it will remain in force for two years from the execution thereof and it will renew for additional one year periods unless the Company provides you with notice of nonrenewal at least 90 days prior to the second anniversary date thereof or, if renewed, at least 90 days prior to each subsequent renewal.

- SEVERANCE: In the event that you are terminated by the Company without Cause (as defined in the Change in Control Severance Agreement), the amount you will be entitled to will be the greater of (i) twelve month's severance in the form of salary continuation payments at your then current salary or (ii) the amount available to other associates at your level under the Company's severance guidelines, provided, in all cases, that such severance shall automatically and immediately be reduced by the amount of salary or other like compensation you receive from employment or engagement as an independent contractor, during the severance period, with any other person or entity. Further, the Company agrees to waive the applicable premium cost that you would otherwise be required to pay for continued group health benefit coverage under COBRA for the corresponding period of severance as provided above unless otherwise prohibited under applicable law. All such payments are intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations there under such that no payment made, or benefit provided, to you hereunder shall be subject to an "additional tax" within the meaning of the Code. Receipt of the payments set forth in this paragraph are conditioned upon the execution and delivery of an agreement containing a release of claims, an agreement of confidentiality, and an agreement of non-solicitation and non-competition for a period of 12 months following termination in such form as the Company shall reasonably determine, which release of claims shall, to the extent permitted by law, waive all claims and actions against the Company and its officers, directors, affiliates and such other related parties and entities as the Company chooses to include in the release.

- WITHHOLDING: The Company is authorized to withhold from any payment to be made hereunder to you such amounts for income tax, social security, unemployment compensation,

excise taxes and other taxes and penalties as in the Company's judgment is required to comply with applicable laws and regulations.

- 409A COMPLIANCE: Notwithstanding anything in this offer letter to the contrary, if you are a "specified employee" (determined in accordance with Section 409A of the Code and Treasury Regulation Section 1.409A-3(i)(2)) as of the termination of your employment with the Company, and, if any payment, benefit or entitlement provided for in this offer letter or otherwise both (i) constitutes a "deferral of compensation" within the meaning of Section 409A of the Code and (ii) cannot be paid or provided in a manner otherwise provided herein or otherwise without subjecting you to additional tax, interest, and/or penalties under Section 409A of the Code, then any such payment, benefit or entitlement that is payable during the first six months following the date of your termination of employment shall be paid or provided to you (or your estate, if applicable) in a lump sum cash payment (together with interest on such amount during the period of such restriction at a rate, per annum, equal to the applicable federal short-term rate (compounded monthly) in effect under Section 1274(d) of the Code on the date of termination) on the earlier of (x) your death or (y) the first business day of the seventh calendar month immediately following the month in which your termination of employment occurs.

- CONFIDENTIALITY, ETC.: As a condition of your employment, you remain subject to the Company's Confidentiality, Work Product, and Non-solicitation Agreement.

- INDEMNIFICATION/D&O: As an officer of the Company, you will be indemnified on the same terms and conditions, and will be covered by the Company's directors' and officers' insurance coverage as other senior executives of the Company.

- NON-COMPETE: You agree that for a period of twelve (12) months following the date that you are no longer in the employ of the Company or any of its subsidiaries for any reason (the "Separation Date"), you will not, without the express prior written consent of the Company, anywhere, either directly or indirectly, whether alone or as an owner, shareholder, partner, member, joint venturer, officer, director, consultant, independent contractor, agent, employee or otherwise of any company or other business enterprise, assist in, engage in, be connected with or otherwise provide services or advice to, any business that is competitive with that of the Company. A "business that is competitive with that of the Company" is (i) one that designs, manufactures, contracts to manufacture or sells children's apparel, footwear or accessories, or intends so to do, and (ii) without limiting the generality of clause (i) above, any of the following companies, entities, or organizations, or any business enterprise that, directly or indirectly, owns, operates or is affiliated with any of the following companies or brands operated by any of the following companies: Carter's, Inc., Ascena Retail Group, Inc., The Gap, Inc., J. Crew Group, Inc., Target Corporation, Kohl's Corporation, Walmart Inc., Amazon.com, Inc., Hennes & Mauritz AB (H&M), or Zara SA, or, in any case, any of their respective subsidiaries, affiliates or related businesses (a "Competitive Business"). Notwithstanding the foregoing, nothing herein

shall be deemed to prohibit your ownership of less than 1% of the outstanding shares of any publicly traded corporation that conducts a Competitive Business.

You acknowledge and agree that the restrictions on the activities in which you may engage that are set forth above, and the location and period of time for which such restrictions apply, are reasonable and necessary to protect the Company's legitimate business interests. You acknowledge and agree that the Company's business is global and, accordingly, the foregoing restrictions cannot be limited to any particular geographic area. You acknowledge and agree that the foregoing restrictions will not prevent you from earning a livelihood.

In consideration for the Company's agreements in this offer letter, you also acknowledge and agree that, in the event that you are no longer in the employ of the Company or any of its subsidiaries for any reason (whether termination of employment is voluntary or involuntary and whether termination of employment is affected by you or by the Company), the foregoing non-competition agreement will remain in full force and effect, and that the Company would not have entered into this offer letter unless such was the case.

- STOCK OWNERSHIP GUIDELINES: As a senior executive of the Company, you will be subject to stock ownership guidelines adopted from time to time by the Compensation Committee of the Company's Board of Directors. Please refer to the Stock Ownership Guidelines for Senior Executives document.
- GOVERNING LAW: This offer letter shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles.

Unless specifically stated in this offer letter, all terms and conditions of your employment are as provided by the policies and practices of The Children's Place, Inc. and its affiliates as in effect from time to time.

This offer of employment is not to be construed as an employment contract, expressed or implied, and it is specifically understood that your employment is at-will (this means that either you or the Company may terminate your employment at any time with or without cause) and further that there is no intent on the part of the Company or yourself, for continued employment of any specified period of time.

Please indicate your acceptance of and agreement with the foregoing by executing this offer letter and returning a copy to me.

Congratulations on your promotion Leah! We are confident that you will make a strong contribution to our continued growth and success.

Sincerely,

/s/ Jane Elfers
Jane Elfers
President & Chief Executive Officer

Agreed and Accepted:

/s/ Leah Swan 4/30/19

Leah Swan Date

EXHIBIT 10.5

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of May 9, 2019

among

THE CHILDREN'S PLACE, INC.,
as the Lead Borrower
for
The Borrowers Party Hereto

The BORROWERS Party Hereto

The GUARANTORS Party Hereto

WELLS FARGO BANK, NATIONAL ASSOCIATION
(successor by merger to Wells Fargo Retail Finance, LLC),
as Administrative Agent, Collateral Agent, L/C Issuer and Swing Line Lender

and

The LENDERS Party Hereto

TABLE OF CONTENTS

SCHEDULES

EXHIBITS

Form of

AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT ("Agreement") is entered into as of May 9, 2019, among

THE CHILDREN'S PLACE, INC., a Delaware corporation, for itself and as agent (in such capacity, the "Lead Borrower") for the other Borrowers now or hereafter party hereto;

the BORROWERS now or hereafter party hereto;

the GUARANTORS now or hereafter party hereto;

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

WELLS FARGO BANK, NATIONAL ASSOCIATION (successor by merger to Wells Fargo Retail Finance, LLC), as Administrative Agent, Collateral Agent, L/C Issuer and Swing Line Lender.

W I T N E S S E T H:

WHEREAS, the Borrowers have requested that the Lenders provide a revolving credit facility, and the Lenders have indicated their willingness to lend, in each case on the terms and conditions set forth herein;

WHEREAS, prior to the date of this Agreement, the Borrowers (other than Children's Place Canada), on the one hand, and Wells Fargo Bank, National Association (as successor by merger to Wells Fargo Retail Finance, LLC), as Administrative Agent and Collateral Agent thereunder, and the lenders party thereto, on the other hand, previously entered into a Credit Agreement dated as of July 31, 2008 (as amended and in effect, the "Existing Credit Agreement"), pursuant to which the lenders party thereto provided the Borrowers with certain financial accommodations; and

WHEREAS, in accordance with Section 10.01 of the Existing Credit Agreement, the Borrowers, the Lenders, and the Agents desire to amend and restate the Existing Credit Agreement as provided herein.

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby agree that the Existing Credit Agreement shall be amended and restated in its entirety to read as set forth herein (it being agreed that this Agreement shall not be deemed to evidence or result in a novation or repayment and reborrowing of the Obligations under the Existing Credit Agreement):

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:

"ACH" means automated clearing house transfers.

"Acceptable Document of Title" means, with respect to any Inventory, a tangible, negotiable bill of lading or other Document (as defined in the UCC or a "document of title" as defined in the PPSA, as applicable) that (a) is issued by a common carrier which is not an Affiliate of the Approved Foreign Vendor or any Loan Party which is in actual possession of such Inventory, (b) is issued to the order of a Loan Party or, if so requested by the Collateral Agent, to the order of the Collateral Agent, (c) names the Collateral Agent as a notify party and bears a conspicuous notation on its face of the Collateral Agent's security interest therein, (d) is not subject to any Lien (other than in favor of the Agent), and (e) is on terms otherwise reasonably acceptable to the Collateral Agent.

"Accommodation Payment" as defined in Section 10.20(d).

"Account" means "accounts" as defined in the UCC or the PPSA, as applicable, and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a policy of insurance issued or to be issued, (d) for a secondary obligation incurred or to be incurred or (e) arising out of the use of a credit or charge card or information contained on or for use with the card.

"Acquisition" means, with respect to any Person (a) an Investment in, or a purchase of a Controlling interest in, the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, (c) a purchase or other acquisition of a material portion of the assets or properties of another Person, (d) any merger, amalgamation or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, (e) any merger, amalgamation or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of a material portion of the assets of any Person, or (f) any acquisition by such Person of any group of Store locations comprising more than five percent (5%) of the number of Stores operated by the acquiring Person as of the date of such acquisition, in each case acquired in any transaction or group of transactions which are part of a common plan.

"Additional Commitment Lender" shall have the meaning provided in Section 2.15(c).

"Adjustment Date" means the first day of each Fiscal Quarter, commencing August 4, 2019.

"Administrative Agent" means Wells Fargo Bank (as successor by merger to Wells Fargo Retail Finance, LLC), in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

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

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

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

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

"Agent(s)" means, individually, the Administrative Agent or the Collateral Agent and, collectively, means both of them.

"Aggregate Borrowing Base" means the sum of the U.S. Borrowing Base and the Canadian Borrowing Base.

"Aggregate Commitments" means the Commitments of all of the Lenders. As of the Restatement Date, the Aggregate Commitments are $325,000,000.

"Agreement" means this Credit Agreement as amended, restated, amended and restated, modified or supplemented from time to time in accordance with the terms hereof.

"Agreement Currency" has the meaning specified in Section 10.27.

"Alabama Capital Lease" means a capital lease for the inventory handling system of the Borrowers and/or any of their Affiliates located at the Alabama Property.

"Alabama Sale-Leaseback Transaction" means the sale-leaseback of the Alabama Property pursuant to a lease on market terms.

"Alabama Property" means the land, together with the buildings, structures, parking areas, and other improvements thereon, owned by Services Company and located at 1377 Airport Road, Fort Payne, Alabama.

"Anti-Corruption Laws" means the FCPA, the U.K. Bribery Act of 2010, as amended, the Corruption of Foreign Public Officials Act (Canada), as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery, money laundering or corruption in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business.

"Anti-Money Laundering Laws" means the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"Applicable Commitment Fee Percentage" means 0.20%.

"Applicable Margin" means:

(a) from and after the Closing Date until the first Adjustment Date, the percentages set forth in Level II of the pricing grid below; and

(b) from and after the Restatement Date, the Applicable Margin shall be determined from the following pricing grid based upon the Average Excess Availability as of the Fiscal Quarter ended immediately preceding such Adjustment Date; provided that, if any of the financial statements delivered pursuant to Section 6.01 of this Agreement or any Borrowing Base Certificate is at any time restated or otherwise revised (including as a result of an audit, but excluding revisions resulting from (i) normal year-end audit adjustments and changes in GAAP or its application to the financial statements delivered pursuant to Section 6.01 of this Agreement or (ii) any other cause other than the correction of an error, omission or misrepresentation of the Loan Parties), or if the information set forth in any such financial statements or any such Borrowing Base Certificate, otherwise proves to be false or incorrect when delivered such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest due under this Agreement shall be immediately recalculated at such higher rate for any applicable periods and shall be due and payable on demand.

Level	Average Excess Availability	LIBOR and BA Rate Margin	Base Rate Margin	Commercial Letter of Credit Fee	Standby Letter of Credit Fee
I	Greater than or equal to 50% multiplied by the Revolving Credit Ceiling	1.125%	0.375%	0.5625%	0.625%
II	Less than 50% multiplied by the Revolving Credit Ceiling	1.375%	0.50%	0.6875%	0.875%

"Applicable Percentage" means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the applicable Commitments represented by such Lender's Commitment at such time. If the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such 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.

"Approved Foreign Vendor" means a Foreign Vendor which (a) is located in any country acceptable to the Administrative Agent in its discretion, (b) has received timely payment or performance of all obligations owed to it by the Loan Parties, (c) has not asserted and has no right to assert any reclamation, repossession, diversion, stoppage in transit, Lien or title retention rights in respect of such Inventory, and (d), if so requested by the Administrative Agent, has entered into and is in full compliance with the terms of a Foreign Vendor Agreement.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate or branch of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"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 Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

"Attributable Indebtedness" means, on any date, 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.

"Audited Financial Statements" means the audited Consolidated balance sheet of the Lead Borrower and its Subsidiaries for the Fiscal Year ended February 2, 2019, and the related Consolidated statements of income or operations and cash flows for such Fiscal Year of the Lead Borrower and its Subsidiaries, including the notes thereto.

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

"Availability Reserves" means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Administrative Agent from time to time determines in its reasonable discretion as being appropriate: (a) to reflect the impediments to the Agents' ability to realize upon the Collateral, (b) to reflect claims and liabilities that the Administrative Agent determines will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party, or (d) to reflect that a Default or an Event of Default has occurred and is continuing (provided that, in the case of this clause (d) only, the reserve shall be reasonably related to the event giving rise to such Default or Event of Default). Without

limiting the generality of the foregoing, Availability Reserves may include (but are not limited to) such reserves as the Administrative Agent from time to time determines in its reasonable discretion as being appropriate based on: (i) rent; (ii) customs duties and other costs to release Inventory which is being imported into the United States or Canada; (iii) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, claims of the PBGC and other Taxes which may have priority over the interests of the Collateral Agent in the Collateral; (iv) salaries, wages and benefits due to employees of any Borrower which may have priority over the interests of the Collateral Agent in the Collateral; (v) Customer Credit Liabilities (provided that the Administrative Agent shall only impose reserves in respect of Customer Credit Liabilities if either (A) an Event of Default has occurred and is continuing or (B) Excess Availability is less than $50,000,000); (vi) reserves for reasonably anticipated changes in the NRLV of Eligible Inventory between appraisals; (vii) warehousemen's or bailee's charges and other Permitted Encumbrances which may have priority over the interests of the Collateral Agent in the Collateral; (viii) Cash Management Reserves; (ix) Bank Products Reserves; and (x) Canadian Priority Payables Reserves.

"Average Excess Availability" shall mean the average daily Excess Availability for the immediately preceding Fiscal Quarter.

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

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

"Bank Products" means any services or facilities provided to any Loan Party by a Lender or any of its Affiliates or branches (but excluding Cash Management Services), including, without limitation on account of (a) Swap Contracts, (b) merchant services constituting a line of credit, (c) leasing, (d) Factored Receivables, (e) supply chain finance services including, without limitation, trade payable services and supplier accounts receivable purchases, and (f) commercial equipment financing and leasing, including vendor finance and chattel paper purchases and syndication.

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

"BA Rate" means, for any Interest Period, the rate per annum determined by the Administrative Agent by reference to the average rate per annum as reported on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time, or any successor page or, if no longer available, such other page or commercially available service displaying Canadian interbank bid rates for Canadian Dollar bankers' acceptances as the Administrative Agent may designate from time to time, or if no such substitute service is available, the rate quoted by a bank named in Schedule I of the Bank Act (Canada) selected by the Administrative Agent at which such bank is offering to

purchase Canadian Dollar bankers' acceptances), as of 10:00 a.m. Eastern (Toronto) time on the date of commencement of the requested Interest Period, for a term, and in an amount, comparable to the Interest Period and the amount of the BA Rate Loan requested (whether as an initial BA Rate Loan or as a continuation of a BA Rate Loan or as a conversion of a Canadian Dollar Base Rate Loan to a BA Rate Loan) by the Canadian Borrowers in accordance with this Agreement; provided that, if any such reported rate is below zero (0), then the rate determined pursuant to this definition of BA Rate shall be deemed to be zero (0). Each determination of the BA Rate shall be made by the Administrative Agent and shall be conclusive in the absence of manifest error.

"BA Rate Loan" means a Loan to the Canadian Borrowers denominated in Canadian Dollars bearing interest at a rate determined by reference to the BA Rate.

"Base Rate" means, for any day, a fluctuating rate per annum equal to (i) with respect to Loans or Borrowings denominated in Dollars, the highest of (a) the Federal Funds Rate plus ½%, (b) the LIBO Rate (which rate shall be calculated based upon an Interest Period of one month and shall be determined on a daily basis), plus one percentage point, and (c) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate (and, if any such announced rate is below zero, then the rate determined pursuant to this clause (c) shall be deemed to be zero); and (ii) with respect to Loans or Borrowings to the Canadian Borrowers denominated in Canadian Dollars, the Canadian Base Rate.

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

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

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

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

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

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

"Borrowers" means, collectively, the U.S. Borrowers and the Canadian Borrowers, and "Borrower" means any one such Person individually as the context requires.

"Borrowing" means a Committed Borrowing and/or a Swing Line Borrowing as the context requires.

"Borrowing Base" means the Canadian Borrowing Base and/or the U.S. Borrowing Base as the context requires.

"Borrowing Base Certificate" has the meaning provided in Section 6.02(c).

"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 Administrative Agent's Office is located and, (a) if such day relates to any LIBO Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank market, and (b) if such day relates to any Canadian Base Rate Loans, BA Rate Loans, or otherwise in respect of Obligations of any Canadian Loan Party, the term "Business Day" shall also exclude any day on which banks in Toronto, Canada are authorized or required by law to remain closed.

"Canadian AML Legislation" means the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada), as amended, and any other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Laws in effect in Canada from time to time, including any regulations, guidelines or orders thereunder.

"Canadian Base Rate" means, for any day, a rate per annum equal to the greatest of (a) zero percent (0%) per annum, (b) the BA Rate existing on such day (which rate shall be calculated based upon an Interest Period of 1 month), plus one percentage point (1%), and (c) the "prime rate" for Canadian Dollar commercial loans made in Canada as reported by Thomson Reuters under Reuters Instrument Code <*CAPRIME*=> on the "CA Prime Rate (Domestic Interest Rate) – Composite Display" page (or any successor page or such other commercially available service or source (including the Canadian Dollar "prime rate" announced by the Canadian Reference Bank). Each determination of the Canadian Base Rate shall be made by the Administrative Agent and shall be conclusive in the absence of manifest error.

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

"Canadian Borrowers" means, collectively, Children's Place Canada and each other Canadian Subsidiary who shall from time to time enter into a Joinder Agreement as a Canadian Borrower.

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

(a) the face amount of the Canadian Borrowers' Eligible Credit Card Receivables multiplied by ninety percent (90%);

plus

(b) the face amount of the Canadian Borrowers' Eligible Trade Receivables (net of Receivables Reserves applicable thereto) multiplied by ninety percent (90%);

plus

(c) the Cost of the Canadian Borrowers' Eligible Inventory, net of Inventory Reserves, multiplied by (x) during the Seasonal Increase Period, ninety-two and one-half percent (92.5%) of the NRLV of such Eligible Inventory, and (y) at all other times, ninety percent (90%) of the NRLV of such Eligible Inventory;

plus

(d) the Cost of the Canadian Borrowers' Eligible In-Transit Inventory, net of Inventory Reserves, multiplied by ninety percent (90%) of the NRLV of Eligible In-Transit Inventory; provided that in no event shall the amount available to be borrowed pursuant to this clause (d) exceed 25% of the lesser of the Canadian Borrowing Base and the Canadian Revolving Credit Ceiling then in effect;

plus

(e) with respect to any Eligible Letter of Credit of the Canadian Borrowers, the Cost of the Inventory supported by such Eligible Letter of Credit, net of Inventory Reserves, multiplied by the lesser of (i) eighty-five percent (85%) of the NRLV of the Inventory supported by such Eligible Letter of Credit, and (ii) eighty five percent (85%);

plus

(f) the Cost of the Canadian Borrowers' Eligible Warehoused Inventory, net of Inventory Reserves, multiplied by ninety percent (90%) of the NRLV of such Eligible Warehoused Inventory; provided that in no event shall the amount available to be borrowed pursuant to this clause (f) exceed the lesser of (i) ten percent (10%) of the lesser of the Canadian Borrowing Base and the Canadian Revolving Credit Ceiling then in effect, or (ii) $2,000,000;

minus

(g) the then amount of all Availability Reserves in respect of the Canadian Loan Parties.

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

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

"Canadian Committed Loan" has the meaning specified in Section 2.01(b).

"Canadian Defined Benefit Plan" means any Canadian Pension Plan which contains a "defined benefit provision," as defined in subsection 147.1(1) of the Canadian Tax Act.

"Canadian Dollars" and "CAD$" mean lawful money of Canada.

"Canadian Guarantors" means, collectively, TCP Investment Canada II Corp., and each other Canadian Subsidiary who shall from time to time enter into a Joinder Agreement as a Canadian Guarantor.

"Canadian Guaranty" means the Canadian Guarantee dated as of the Restatement Date made by the Canadian Loan Parties in favor of the Administrative Agent and the other Credit Parties.

"Canadian L/C Obligations" means, as at any date of determination, the sum of (a) the aggregate undrawn amount of all outstanding Canadian Letters of Credit, plus (b) the aggregate amount of outstanding reimbursement obligations with respect to Canadian Letters of Credit which remain unreimbursed or which have not been paid through a Canadian Loan. For purposes of computing the amounts available to be drawn under any Canadian Letter of Credit, the amount of such Canadian 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 Canadian Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of any Rule under the ISP or any article of the UCP, such Canadian Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Canadian Lender" means each Lender having a Canadian Commitment, and shall include the Canadian Swing Lender, and shall also include any other Person made a party as to this Agreement pursuant to the provisions of Section 10.01 of this Agreement; and "Canadian Lenders" means each of the Lenders with a Canadian Commitment or any one or more of them.

"Canadian Letter of Credit" means a Letter of Credit issued on behalf of any Canadian Loan Party or any of its Canadian Subsidiaries.

"Canadian Letter of Credit Sublimit" means $10,000,000.00.

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

"Canadian Loan Party" means Canadian Borrowers, Canadian Guarantors and any other Loan Party that is a Canadian Subsidiary.

"Canadian Pension Event" means (a) the termination or partial termination of a Canadian Defined Benefit Plan or the filing of a notice of interest to terminate in whole or in part a Canadian Defined Benefit Plan, or (b) the institution of proceedings by any Governmental Authority to terminate a Canadian Defined Benefit Plan in whole or in part or have a replacement administrator appointed to administer a Canadian Defined Benefit Plan, or (c) any other event or condition or declaration or application which might constitute grounds for the termination or winding up of a

Canadian Defined Benefit Plan, in whole or in part, or the appointment by any Governmental Authority of a replacement administrator or trustee to administer a Canadian Defined Benefit Plan.

"Canadian Pension Plan" means each pension plan required to be registered under Canadian federal or provincial laws which is maintained or contributed to by, or to which there is an obligation to contribute by, any Loan Party in respect of any Person's employment in Canada with such Loan Party, but does not include the Canada Pension Plan or the Quebec Pension Plan as maintained by the Government of Canada or the Province of Quebec, respectively, or any similar plan maintained by any other province.

"Canadian Priority Payables Reserve" means reserves for: (a) amounts owing or in respect of which any Loan Party has an obligation to remit to a Governmental Authority of Canada or other Person in Canada pursuant to any applicable law, rule or regulation, with respect to (i) goods and services taxes, sales taxes, employee income taxes, municipal taxes and other taxes payable or to be remitted or withheld; (ii) workers' compensation or employment insurance; (iii) wages, salaries, commissions and vacation pay as provided for under the Wage Earners Protection Program Act (Canada); and (iv) other like charges and demands; in each case in this paragraph (a), to the extent that any Governmental Authority of Canada or other Person in Canada may claim a lien, security interest, hypothec, trust or other claim or other Lien ranking or which would reasonably be expected to rank in priority to or pari passu with one or more of the Liens granted in the Loan Documents; and (b) the aggregate amount of any other liabilities of any Loan Party (i) in respect of which a trust or deemed trust has been imposed or may reasonably be likely to be imposed on any Collateral in Canada to provide for payment, (ii) in respect of rights or claims of suppliers under section 81.1 of the Bankruptcy and Insolvency Act (Canada); (iii) in respect of pension fund obligations, including in respect of unpaid or unremitted pension plan contributions, amounts representing any unfunded liability, solvency deficiency or wind-up deficiency whether or not due with respect to a Canadian Pension Plan (including "normal cost", "special payments" and any other payments in respect of any funding deficiency or shortfall), (iv) which are secured by a lien, security interest, pledge, charge, right or claim on any Collateral (other than Permitted Liens that do not have priority over Administrative Agent's Liens), or (iv) in respect of directors and officers, debtor-in possession financing, administrative charges, critical supplier charges or shareholder charges; in each case in this paragraph (b), pursuant to any applicable law, rule or regulation in Canada and which such lien, trust, security interest, hypothec, pledge, charge, right, claim or other Lien ranks or in the reasonable discretion of the Administrative Agent, could reasonably be expected to rank in priority to or pari passu with one or more of the Liens granted in the Loan Documents.

"Canadian Reference Bank" means The Toronto-Dominion Bank or such other bank named in Schedule I of the Bank Act (Canada) that is designated by the Administrative Agent from time to time as the Canadian Reference Bank for the purposes of this Agreement.

"Canadian Revolving Credit Ceiling" means $25,000,000 on and after the Restatement Date, as such amount may be modified in accordance with the terms of this Agreement.

"Canadian Security Agreement" means the Canadian Security Agreement dated as of the Restatement Date among the Canadian Loan Parties and the Collateral Agent.

"Canadian Subsidiary" means any Subsidiary of any Borrower that is organized under the laws of Canada or any province or territory thereof.

"Canadian Swing Line" means the revolving credit facility made available by the Canadian Swing Line Lender pursuant to Section 2.04.

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

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

"Canadian Swing Line Sublimit" means an amount equal to the lesser of (a) $5,000,000 or (b) the Canadian Commitments. The Canadian Swing Line Sublimit is part of, and not in addition to, the Canadian Commitments.

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

"Canadian Underlying Issuer" means The Toronto-Dominion Bank or one of its Affiliates or such other Person that is acceptable to the Administrative Agent.

"Capital Expenditures" means, with respect to any Person for any period, (a) all expenditures made (whether made in the form of cash or other property) or costs incurred for the acquisition or improvement of fixed or capital assets of such Person (excluding normal replacements and maintenance which are properly charged to current operations), in each case that are (or should be) set forth as capital expenditures in a Consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP, and (b) Capital Lease Obligations incurred by a Person during such period.

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

"Cash Collateralize" has the meaning specified in Section 2.03(k).

"Cash Dominion Event" means either (i) the occurrence and continuance of any Specified Event of Default, or (ii) the failure of the Borrowers to maintain Excess Availability of at least the greater of (x) 12.5% of the Loan Cap and (y) $32,500,000 at any time. For purposes of this Agreement, the occurrence of a Cash Dominion Event shall be deemed continuing at the Administrative Agent's option (i) so long as such Specified Event of Default has not been waived, and/or (ii) if the Cash Dominion Event arises as a result of the Borrowers' failure to maintain Excess Availability as required hereunder, until Excess Availability has exceeded the greater of (x) 12.5% of the Loan Cap and (y) $32,500,000 for forty-five (45) consecutive days, in which case a Cash Dominion Event shall no longer be deemed to be continuing for purposes of this Agreement; provided that a Cash Dominion Event shall be deemed continuing (even if a Specified Event of

Default is no longer continuing and/or Excess Availability exceeds the required amount for forty-five (45) consecutive days) at all times after a Cash Dominion Event has occurred and been discontinued on three (3) occasions after the Restatement Date. The termination of a Cash Dominion Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Cash Dominion Event in the event that the conditions set forth in this definition again arise.

"Cash Management Reserves" means such reserves as the Administrative Agent, from time to time, determines in its reasonable 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 or facilities provided to any Loan Party by a Lender or any of its Affiliates or branches, including, without limitation: (a) ACH transactions, (b) controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) foreign exchange facilities, (d) credit or debit cards, (e) any services related to the acceptance and/or processing of payment cards or devices, and (f) purchase cards.

"Cash on Hand" means, as of any date of determination, the amount of unrestricted cash of the Borrowers that is (a) deposited in an account of the Borrowers maintained with Wells Fargo Bank or its Affiliates, which account is subject to a valid, enforceable and first priority perfected security interest in favor of the Collateral Agent pursuant to and/or better evidenced by a control agreement, in form and substance satisfactory to the Collateral Agent, and (b) not subject to any Lien, except in favor of the Collateral Agent.

"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.

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

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

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the existing shareholders of the Lead Borrower set forth on Schedule 1.02 or a "person" or "group" Controlled by one of the existing shareholders of the Lead Borrower set forth on Schedule 1.02, becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such "person" or "group" has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 25% or more of the Equity Interests of the Lead Borrower entitled to vote for members of the board of directors or equivalent governing body of the Lead Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such "person" or "group" has the right to acquire pursuant to any option right); or

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

"Children's Place Canada" means The Children's Place (Canada), LP, an Ontario limited partnership.

"Closing Date" means July 31, 2008.

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

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

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

"Collateral Agent" means Wells Fargo Bank (as successor by merger to Wells Fargo Retail Finance, LLC), acting in such capacity for its own benefit and the ratable benefit of the other Credit Parties.

"Commercial Letter of Credit" means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of Inventory by a Borrower in the ordinary course of business of such Borrower.

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

"Commitment" means the Canadian Commitment and/or the U.S. Commitment as the context requires.

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

"Commitment Increases" shall have the meaning provided in Section 2.15(a).

"Committed Borrowing" means a U.S. Committed Borrowing and/or a Canadian Committed Borrowing as the context requires.

"Committed Loans" means U.S. Committed Loans and/or Canadian Committed Loans as the context requires.

"Committed Loan Notice" means a notice of (a) a Committed Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of LIBO Rate Loans or BA Rate Loans, pursuant to Section 2.02, which, if in writing, shall be substantially in the form of Exhibit A.

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

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

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

"Confirmation Agreement" means that certain Confirmation, Ratification and Amendment of Ancillary Loan Documents dated as of the Restatement Date, by and among the U.S. Loan Parties and the Agents.

"Consent" means actual consent given by a Lender from whom such consent is sought; or the passage of ten (10) Business Days from receipt of written notice to a Lender from the Administrative Agent of a proposed course of action to be followed by the Administrative Agent without such Lender's giving the Administrative Agent written notice of that Lender's objection to such course of action.

"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.

"Consolidated EBITDA" means, at any date of determination, an amount equal to Consolidated Net Income of the Lead Borrower and its Subsidiaries on a Consolidated basis for the most recently completed Measurement Period, plus (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges, (ii) the provision for federal, state, provincial, local and foreign income Taxes, (iii) depreciation and amortization expense, (iv) non-cash stock-based compensation expense and (v) other non-recurring expenses reducing such Consolidated Net Income which do not represent a cash item in such period or any future period (in each case of or by the Lead Borrower and its Subsidiaries for such Measurement Period), minus (b) the following to the extent included in calculating such Consolidated Net Income: (i) federal, state, provincial, local and foreign income tax credits and (ii) all non-cash items increasing Consolidated Net Income (in each case of or by the Lead Borrower and its Subsidiaries for such Measurement Period), all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Fixed Charge Coverage Ratio" means, at any date of determination, the ratio of (a) (i) Consolidated EBITDA minus (ii) Capital Expenditures, minus (iii) the aggregate amount of federal, state, provincial, local and foreign income Taxes paid in cash to (b) the sum of (i) Debt Service Charges plus (ii) the aggregate amount of all Restricted Payments made in cash, in each case, of or by the Lead Borrower and its Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Group" means the Lead Borrower and its Subsidiaries which are Consolidated for financial reporting purposes in accordance with GAAP.

"Consolidated Interest Charges" means, for any Measurement Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Contracts, but excluding any non-cash or deferred interest financing costs, and (b) the portion of Capital Lease Obligations with respect to such period that is treated as interest in accordance with GAAP, in each case of or by the Lead Borrower and its Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Net Income" means, as of any date of determination, the net income of the Lead Borrower and its Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP; provided, however, that there shall be excluded (a) extraordinary gains and extraordinary losses for such Measurement Period, (b) any income (or loss) included in the Consolidated net income of the Lead Borrower during such Measurement Period in which any other Person has a joint interest, except to the extent actually paid in cash to the Lead Borrower or any of its Subsidiaries during such period, (c) with respect to any Person which was not a member of the Consolidated Group throughout such Measurement Period, the income (or loss) of such Person accrued prior to the date it became a member of the Consolidated Group, and (d) the income of any Subsidiary of the Lead Borrower during such Measurement Period to the extent that such Subsidiary is prohibited by its Organization Documents

or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary from making a Restricted Payment in cash during such Measurement Period, except that the Lead Borrower's equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income.

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

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

"Cost" means the calculated cost of purchases, based upon the Borrowers' accounting practices in effect on the Restatement Date (as such accounting practices may change or be modified from time to time in accordance with GAAP), as 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.

"Covenant Compliance Event" means either (a) the occurrence and continuance of an Event of Default, or (b) the failure of the Borrowers to maintain Excess Availability of at least the greater of (x) 10% of the Loan Cap and (y) $32,500,000 at any time. For purposes hereof, the occurrence of a Covenant Compliance Event shall be deemed continuing at the Administrative Agent's option (i) so long as such Event of Default has not been waived, and/or (ii) if the Covenant Compliance Event arises as a result of the Borrowers' failure to achieve Excess Availability as required hereunder, until Excess Availability has exceeded the greater of (x) 10% of the Loan Cap and (y) $32,500,000 for forty-five (45) consecutive days, in which case a Covenant Compliance Event shall no longer be deemed to be continuing for purposes of this Agreement; provided that a Covenant Compliance Event shall be deemed continuing (even if an Event of Default is no longer continuing and/or Excess Availability exceeds the required amount for ninety (90) consecutive days) at all times after a Covenant Compliance Event has occurred and been discontinued on three (3) occasions after the Restatement Date. The termination of a Covenant Compliance as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Covenant Compliance Event in the event that the conditions set forth in this definition again arise.

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

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

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

"Credit Card Receivables" means each "payment intangible" (as defined in the UCC or an "intangible" or "account" as defined in the PPSA, as applicable) 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 Borrowing and (b) an L/C Credit Extension.

"Credit Party" or "Credit Parties" means (a) individually, (i) each Lender and its Affiliates and branches, (ii) each Agent, (iii) each 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.

"Credit Party Expenses" means, without limitation, (a) all reasonable out-of-pocket expenses incurred by the Agents and their respective Affiliates, in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) one primary counsel for the Agents and one local counsel in each applicable jurisdiction, (B) outside consultants for the Agents, (C) appraisers, (D) commercial finance examinations, (E) photocopying, notarization, couriers and messengers, telecommunication, public record searches, filing fees, recording fees and publication, (F) the Administrative Agent's customary fees and charges imposed or incurred in connection with any background checks or OFAC/PEP or Canadian AML Legislation searches related to any Loan Party or its Subsidiaries, and (G) all such reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with (A) the syndication of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral (including, without limitation, in connection with, during the continuation of an Event of Default, gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated), or (D) any workout, restructuring or negotiations in respect of any Obligations, (iii) all customary fees and charges (as adjusted from time to time) of the Agents with respect to the disbursement of funds (or the receipt of funds) to or for the account of the Borrowers (whether by wire transfer or otherwise), together with any out-of-pocket costs and

expenses incurred in connection therewith, and (iv) customary charges imposed or incurred by the Administrative Agent resulting from the dishonor of checks payable by or to any Loan Party; (b) with respect to the L/C Issuer, and its Affiliates and branches, all reasonable out-of-pocket expenses incurred in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; and (c) all reasonable out-of-pocket expenses incurred by the Credit Parties who are not the Agents, the L/C Issuer or any Affiliate or branch of any of them, after the occurrence and during the continuance of an Event of Default, provided that such Credit Parties shall be entitled to reimbursement for no more than one primary counsel and one local counsel in each applicable jurisdiction (absent a conflict of interest in which case the Credit Parties may engage and be reimbursed for additional counsel), one outside consultant and one financial advisor, in each case representing or advising all such Credit Parties.

"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 and customer deposits of the Borrowers.

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

"DDA" means each checking or other demand deposit account maintained by any of the Loan Parties.

"Debt Service Charges" means, for any Measurement Period, the sum of (a) Consolidated Interest Charges for such Measurement Period, plus (b) principal payments made or required to be made on account of Indebtedness (excluding the Obligations but including, without limitation, Capital Lease Obligations) for such Measurement Period, in each case of or by the Lead Borrower and its Subsidiaries for such Measurement Period, all as determined on a Consolidated basis in accordance with GAAP.

"Debtor Relief Laws" means the Bankruptcy Code of the United States, , the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), the Winding Up and Restructuring Act (Canada), the restructuring provisions of applicable Canadian corporate statutes, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, arrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, Canada or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

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

"Default Rate" means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate (in respect of LIBO Rate Loans and Base Rate Loans in Dollars) or the Canadian Base Rate (in respect of BA Rate Loans and Canadian Base Rate Loans, respectively) plus (ii) the Applicable Margin, if any, applicable to Base Rate Loans, as applicable, plus (iii) 2% per annum; provided, however, that with respect to a LIBO Rate Loan or BA Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such LIBO Rate Loan or BA Rate Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Margin for Standby Letters of Credit or Commercial Letters of Credit, as applicable, plus 2% per annum.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Loans within one (1) Business Day of the date such Loans were required to be funded hereunder, or (ii) pay to any Agent, L/C Issuer, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within one (1) Business Day of the date when due, (b) has notified any Borrower, any Agent or 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 (3) Business Days after written request by the Administrative Agent or Lead Borrower, to confirm in writing to the Administrative Agent and Lead Borrower that it will comply with its prospective funding obligations hereunder (provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and Lead Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of any proceeding under any Debtor Relief Laws, (ii) had appointed for it a receiver, interim receiver, custodian, conservator, trustee, monitor, 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, the Canada Deposit Insurance Corporation or any other state, federal or foreign regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; provided, that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or Canada or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to Lead Borrower, L/C Issuer, and each Lender.

"Defaulting Lender Rate" means (a) for the first three (3) days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Committed Loans that are Base Rate Loans (inclusive of the Applicable Margin applicable thereto).

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale, transfer, license or other disposition of (whether in one transaction or in a series of transactions) all or substantially all of its assets to or

in favor of any Person) of any property (including, without limitation, any Equity Interests) by any Person (or the granting of any option or other right to do any of the foregoing), including 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, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Loans mature; provided, however, that (i) only the portion of such Equity Interests which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock and (ii) with respect to any Equity Interests issued to any employee or to any plan for the benefit of employees of the Lead Borrower or its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Lead Borrower or one of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, resignation, death or disability and if any class of Equity Interest of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of an Equity Interest that is not Disqualified Stock, such Equity Interests shall not be deemed to be Disqualified Stock. Notwithstanding the preceding sentence, any Equity Interest that would constitute Disqualified Stock solely because the holders thereof have the right to require a Loan Party to repurchase such Equity Interest upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Lead Borrower and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

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

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of any political subdivision of the United States.

"Drawing Document" means any Letter of Credit or other document presented for purposes of drawing under any Letter of Credit, including by electronic transmission such as SWIFT, electronic mail, facsimile or computer generated communication.

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

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

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

"Eligible Assignee" means (a) a Credit Party or any of its Affiliates or branches; (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); provided, however, that each Eligible Assignee described in clauses (a) through (e), above, shall be reasonably acceptable to, and subject to the approval of, the Administrative Agent, the L/C Issuer, the Swing Line Lender, and the Lead Borrower (each such approval not to be unreasonably withheld or delayed) to the extent provided in Section 10.06(b) of this Agreement; provided further that, notwithstanding the foregoing, "Eligible Assignee" shall not include a Loan Party or any of the Loan Parties' Affiliates or Subsidiaries.

"Eligible Credit Card Receivables" means Credit Card Receivables due to a Borrower on a non-recourse basis from Visa, Mastercard, American Express Company, Discover, and other major credit card processors, in each case acceptable to the Administrative Agent in its reasonable discretion, as they arise in the ordinary course of business, which have been earned by performance, and are deemed by the Administrative Agent in its reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base. 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, 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 Administrative 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 a "payment intangible" (as defined in the UCC or an "intangible" or "account" as defined in the PPSA, as applicable);

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

(c) Credit Card Receivables with respect to which a Loan Party does not have good, valid and marketable title, free and clear of any Lien (other than Liens granted to the Collateral Agent);

(d) Credit Card Receivables that are not subject to a first priority security interest in favor of the Collateral Agent (it being the intent that chargebacks in the ordinary course by the credit card processors shall not be deemed violative of this clause);

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

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

(g) Credit Card Receivables due from a Credit Card Issuer or Credit Card Processor which is the subject of any bankruptcy or insolvency proceedings;

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

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

(j) Credit Card Receivables which the Administrative Agent determines in its reasonable discretion to be uncertain of collection.

"Eligible Franchise Receivables" means Accounts deemed by the Administrative Agent in its reasonable discretion to be eligible for inclusion in the calculation of the U.S. Borrowing Base, which are due from foreign franchisees of the U.S. Borrowers for royalties, goods sold and received and other amounts due to the U.S. Borrowers under the applicable franchise agreements, to the extent that such amounts due are supported by stand-by letters of credit assigned to the Administrative Agent and which letters of credit (i) are from issuers and on terms acceptable to the Administrative Agent in its reasonable discretion, and (ii) may not be amended, revised, or surrendered without the consent of the Administrative Agent, and as to which the Administrative Agent has received all reporting and related information as required under Section 6.02(b)(ii).

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

(a) which has been shipped from a location outside of the United States or Canada for receipt by a Borrower within forty-five (45) days of the date of shipment, but which has not yet been delivered to such Borrower;

(b) for which the purchase order is in the name of a Borrower and title to such Inventory 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 Collateral Agent has control (as defined in the UCC or the PPSA, as applicable) over, or possession of, the documents of title which evidence ownership of the subject Inventory (such as, if requested by the Collateral Agent, by the delivery of a Customs Broker Agreement);

(d) which is insured against types of loss, damage, hazards and risks, and in amounts, reasonably satisfactory to the Collateral Agent;

(e) for which the common carrier is not an Affiliate of the applicable vendor or supplier;

(f) the Foreign Vendor with respect to such Inventory is an Approved Foreign Vendor;

(g) 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

(h) which otherwise would constitute Eligible Inventory;

provided that the Administrative Agent may, in its discretion, exclude any particular Inventory from the definition of "Eligible In-Transit Inventory" in the event the Administrative Agent determines that such Inventory is subject to any Person's right of reclamation, repudiation, stoppage in transit or any event has occurred or is reasonably anticipated by the Administrative Agent to arise which may otherwise adversely impact the ability of the Collateral Agent to realize upon such Inventory. The Administrative Agent shall notify the Lead Borrower of any such exclusion and the reasons therefor as soon as reasonably practicable, provided that the effectiveness of such exclusion shall not be conditioned upon such notification.

Each Committed Loan Notice or Swing Line Loan Notice, as the context requires, shall be deemed a certification by the Borrowers that, to the best knowledge of the Borrowers, all Eligible In-Transit Inventory included in the most recent Borrowing Base Certificate meets all of the Borrowers' representations and warranties contained in the Loan Documents concerning Eligible Inventory, that the Borrowers know of no reason why such Eligible Inventory would not be accepted by the Borrowers when it arrives and that the shipment, as evidenced by the documents, conforms to the related order documents.

"Eligible Inventory" means, as of the date of determination thereof, without duplication, items of Inventory (other than Eligible In-Transit Inventory, Inventory supported by an Eligible Letter of Credit, or Eligible Warehoused Inventory) of a Borrower that are finished goods, merchantable and readily saleable to the public in the ordinary course of the Borrowers' business and deemed by the Administrative Agent in its reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base, in each case that, except as otherwise agreed by the

Administrative Agent, complies with each of the representations and warranties respecting Inventory made by the Borrowers in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Administrative Agent, the following items of Inventory shall not be included in Eligible Inventory:

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

(b) Inventory that is leased by, or is on consignment to, a Borrower;

(c) Inventory (other than Eligible In-Transit Inventory, Inventory supported by an Eligible Letter of Credit, or Eligible Warehoused Inventory) that is not located in the United States (excluding territories or possessions of the United States) or Canada at a location that is owned or leased by a Borrower, except to the extent that the Borrowers have furnished the Administrative Agent with (i) any UCC financing statements, PPSA financing statements or other documents that the Administrative Agent may determine to be necessary to perfect its security interest in such Inventory at such location, and (ii) a Collateral Access Agreement executed by the Person owning any such location;

(d) Inventory that is located in a distribution center or warehouse leased by a Borrower unless the applicable lessor or warehouseman has delivered to the Administrative Agent a Collateral Access Agreement or the Administrative Agent has imposed an Availability Reserve in such amount as the Administrative Agent may determine in its reasonable discretion;

(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 are special order or custom items, work-in-process, raw materials, or that constitute spare parts, promotional, marketing, packaging and shipping materials or supplies used or consumed in a Borrower's business, (iv) are not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (v) are bill and hold goods;

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

(g) Inventory that consists of samples, labels, bags, packaging, and other similar non-merchandise categories;

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

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

(j) Inventory as to which either the Borrowers or the Agents do not have the right to utilize any Intellectual Property necessary or appropriate to realize on such Inventory as set forth in the applicable Security Documents in a manner consistent with the most recent appraisal obtained by the Administrative Agent in accordance with Section 6.10 hereof.

"Eligible Letter of Credit" means, as of any date of determination thereof, a Commercial Letter of Credit deemed by the Administrative Agent in its reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base, which Commercial Letter of Credit supports the purchase of Inventory, (a) which Inventory does not constitute Eligible In-Transit Inventory and for which no documents of title have then been issued, (b) which Inventory otherwise would constitute Eligible Inventory when purchased, (c) which Commercial Letter of Credit has an expiry within one hundred twenty (120) days of the date of initial issuance of such Commercial Letter of Credit, (d) which Commercial Letter of Credit provides that it may be drawn only after the Inventory is completed and after an Acceptable Document of Title has been issued for such Inventory reflecting a Borrower or the Collateral Agent as consignee of such Inventory, and (e) which will constitute Eligible In-Transit Inventory upon satisfaction of the requirements of clause (d) hereof.

"Eligible Real Estate" means the Alabama Property and any other Real Estate of a U.S. Borrower which satisfies all of the following conditions and is otherwise deemed by the Required Lenders in their reasonable discretion to be eligible for inclusion in the calculation of the U.S. Borrowing Base:

(a) The applicable U.S. Borrower owns fee title to such Real Estate;

(b) The applicable U.S. Borrower has executed and delivered to the Collateral Agent such mortgages, information and documents as may be reasonably requested by the Collateral Agent, including, without limitation, such as may be necessary to comply with FIRREA and other applicable Law;

(c) The Collateral 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 Administrative Agent (to the extent available at commercially reasonable rates) and in amounts reasonably acceptable to the Administrative Agent, issued, coinsured and reinsured (to the extent required by the Administrative Agent) by title insurers reasonably acceptable to the Administrative 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 Collateral Agent under applicable Law or otherwise reasonably acceptable to the Agent;

(d) The Collateral Agent has a perfected first-priority Lien on such Real Estate, subject only to Permitted Encumbrances;

(e) The Administrative Agent shall have received an appraisal (based upon FMV) of such Real Estate complying with the requirements of FIRREA by a third party appraiser reasonably acceptable to the Administrative Agent and otherwise in form and substance reasonably satisfactory to the Administrative Agent;

(f) Such Real Estate is used by a U.S. Borrower for offices or as a Store or distribution center;

(g) As to any particular property, the applicable U.S. Borrower is in compliance with the representations, warranties and covenants set forth in the mortgage relating to such Real Estate;

(h) the Collateral 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 Collateral Agent and the issuer of the Mortgage Policies in a manner reasonably satisfactory to the Collateral Agent by a land surveyor duly registered and licensed in the jurisdictions in which the property described in such surveys is located and reasonably acceptable to the Collateral 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 Collateral Agent;

(i) the Administrative 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 Administrative Agent, from an environmental consulting firm reasonably acceptable to the Administrative Agent, 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 Administrative Agent shall be satisfied with the nature and amount of any such matters. The Administrative Agent may, upon the receipt of a Phase I Environmental Site Assessment require the delivery of further environmental assessments or reports to the extent such further assessments or reports are recommended in the Phase I Environmental Site Assessment; and

(j) the applicable U.S. Borrower shall have delivered to the Collateral Agent evidence of flood insurance naming the Collateral Agent as mortgagee as 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 Collateral Agent.

"Eligible Trade Receivables" means Accounts deemed by the Administrative Agent in its reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base arising from the sale of the Loan Parties' Inventory (but excluding, for the avoidance of doubt, Credit Card Receivables) that satisfy the following criteria at the time of creation and continue to meet the same at the time of such determination: each such Account (i) has been earned by performance and represents the bona fide amounts due to a Loan Party from an account debtor, and in each case

originated in the ordinary course of business of such Loan Party, and (ii) in each case is acceptable to the Administrative Agent in its reasonable discretion, and is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (r) below as determined by the Administrative Agent in its reasonable discretion. Without limiting the foregoing, to qualify as an Eligible Trade Receivable, an Account shall indicate no Person other than a Loan Party as payee or remittance party. In determining the amount to be so included, the face amount of an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Loan Party may be obligated to rebate to a customer pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by the Loan Parties to reduce the amount of such Eligible Trade Receivable. Except as otherwise agreed by the Administrative Agent, any Account included within any of the following categories shall not constitute an Eligible Trade Receivable:

(a) Accounts that are not evidenced by an invoice;

(b) Accounts that have been outstanding for more than ninety (90) days from the date of invoice or more than sixty (60) days past the due date;

(c) Accounts due from any account debtor for which more than fifty percent (50%) of the Accounts owing from such account debtor are ineligible pursuant to clause (b), above;

(d) All Accounts owed by an account debtor and/or its Affiliates together to the extent such Accounts exceed (x) thirty percent (30%), or (y) with respect to any of the Specified Account Debtors, fifty percent (50%) (or such higher percentages now or hereafter established by the Administrative Agent for any particular account debtor) of the amount of all Accounts at any one time (but the portion of the Accounts not in excess of the applicable percentages may be deemed Eligible Trade Receivables, in the Administrative Agent's reasonable discretion); provided that no portion of any Accounts owed by any Investment Grade Account Debtor shall be deemed ineligible solely by reason of this clause (d);

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

(f) Accounts which are disputed or with respect to which a claim, counterclaim, offset or chargeback has been asserted, but only to the extent of such dispute, counterclaim, offset or chargeback;

(g) Accounts which arise out of any sale made not in the ordinary course of business or are not payable in Dollars or, as regards Canadian Loan Parties, Canadian Dollars;

(h) Other than as set forth in clause (o) below, Accounts which are owed by any account debtor whose principal place of business is not within the United States or Canada;

(i) Accounts which are owed by any Affiliate or any employee of a Loan Party;

(j) Accounts for which all consents, approvals or authorizations of, or registrations or declarations with any Governmental Authority required to be obtained, effected or given in connection with the performance of such Account by the account debtor or in connection with the enforcement of such Account by the Collateral Agent have not been duly obtained, effected or given and are not in full force and effect;

(k) Accounts due from an account debtor which is the subject of any bankruptcy or insolvency proceeding, has had a trustee, interim receiver, receiver, monitor or similar Person appointed for all or a substantial part of its property, has made an assignment for the benefit of creditors or has suspended its business;

(l) Accounts due from any Governmental Authority except to the extent that (i) the subject account debtor is the federal government of the United States and the relevant Loan Party has complied with the Federal Assignment of Claims Act of 1940, (ii) the subject account debtor is Her Majesty in right of Canada or any provincial or local Governmental Authority, or any ministry, in each case, in Canada, and the relevant Loan Party has complied with the particular prescriptions of the Financial Administration Act (Canada) and/or any analogous Canadian provincial, territorial, or municipal legislations and regulations, or (iii) the subject account debtor is another Governmental Authority and the relevant Loan Party has complied with all applicable Laws analogous to those otherwise described in this clause (l);

(m) Accounts (i) owing from any Person that is also a supplier to or creditor of a Loan Party or any of its Subsidiaries, but only to the extent of the indebtedness owed to such supplier or creditor, unless such Person has waived any right of setoff in a manner reasonably acceptable to the Administrative Agent or (ii) representing any manufacturer's or supplier's credits, discounts, incentive plans or similar arrangements entitling a Loan Party or any of its Subsidiaries to discounts on future purchase therefrom;

(n) Accounts arising out of sales on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval or consignment basis or subject to any right of return, set off or charge back, but only to the extent of such right of return, set off, or charge back;

(o) Accounts arising out of sales to account debtors outside the United States or Canada unless such Accounts are fully backed by one or more irrevocable letters of credit on terms, and issued by a financial institution, reasonably acceptable to the Administrative Agent and each such irrevocable letter of credit is in the possession of the Administrative Agent**;**

(p) Accounts evidenced by a promissory note or other instrument;

(q) Accounts consisting of amounts due from vendors as rebates or allowances;

(r) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity; or

(s) Accounts which the Administrative Agent determines in its reasonable discretion to be unacceptable for borrowing.

"Eligible Warehoused Inventory" means Inventory not intended to be sold at retail in a Store location, subject to a fully perfected first priority security interest in favor of the Collateral Agent for the benefit of the Credit Parties, and located in a warehouse in the United States or Canada which is either owned by a Borrower or maintained pursuant to an agreement between a Borrower and the owner of such warehouse (including an agreement between a Borrower and an agent of such Borrower which stores such Inventory on its premises pending instructions from such Borrower as to its sale to a wholesale vendor) with respect to which (i) either (a) no negotiable or non-negotiable document covering the goods has been issued or (b) in the event a negotiable or non-negotiable document covering the goods has been issued, there has been created in favor of the Collateral Agent for the benefit of the Credit Parties a perfected first priority security interest in such document pursuant to the Uniform Commercial Code and/or the PPSA in all applicable jurisdictions and all other applicable Law (in addition to the security interest in the goods), (ii) the Administrative Agent has received a Collateral Access Agreement from the owner and/or operator of such warehouse, and (iii) which otherwise would constitute Eligible Inventory.

"Environmental Compliance Reserve" means, with respect to Eligible Real Estate, any reserve which the Agents, from time to time in their reasonable discretion establish 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, or (b) to correct any such non-compliance with Environmental Laws.

"Environmental Laws" means any and all federal, state, provincial, 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 Security Agreement or the Canadian Security Agreement, as applicable.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for

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

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

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with any Loan Party 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 and 4971 of the Code).

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

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

"Event of Default" has the meaning specified in Section 8.01. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been duly waived as provided in Section 10.01 hereof.

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

(a) The lesser of:

(i) the Aggregate Borrowing Base; or

(ii) the Revolving Credit Ceiling;

minus

(b) The aggregate Outstanding Amount of all Credit Extensions.

"Excess Availability Reserve" means an amount equal to the lesser of (a) the product of (i) the amount generated by clauses (a) through (e) of each Borrowing Base multiplied by (ii) ten percent (10%) or (b) the product of (i) the Revolving Credit Ceiling then in effect multiplied by (ii) ten percent (10%); provided, however, if the amount generated by clauses (a) through (e) of each Borrowing Base minus the amount set forth in clause (a) above is greater than the Revolving Credit Ceiling then in effect, the Excess Availability Reserve shall be $0.

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

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrowers hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or Canada or any similar tax imposed by any other jurisdiction in which any Borrower is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Lead Borrower under Section 10.13), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(d), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding tax pursuant to Section 3.01(a), (d) any U.S. federal, state or local backup withholding tax, (e) any U.S. federal withholding tax imposed under FATCA, and (f) any Canadian withholding tax that is imposed on amounts payable to a Lender as a result of such Lender (i) not dealing at arm's length (within the meaning of the Income Tax Act (Canada)) with a Loan Party, or (ii) being a "specified non-resident shareholder" of a Loan Party or a non-resident person not dealing at arm's length with a "specified shareholder" of a Loan Party (in each case within the meaning of the Income Tax Act (Canada)) (other than where the non-arm's length relationship arises, or where the Lender is a "specified shareholder", or does not deal at arm's

length with a "specified shareholder", as a result of the Lender having become a party to, received or perfected a security interest under or received or enforce any rights under, a Loan Document).

"Executive Order" has the meaning set forth in Section 10.22.

"Existing Credit Agreement" has the meaning specified in the recitals hereto

"Existing Letters of Credit" means each of the letters of credit issued under the Existing Credit Agreement, as listed on Schedule 2.03(o) hereto.

"Existing Obligations" has the meaning set forth in Section 10.26.

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

"Facility Guaranty" means (i) the Guaranty dated as of the Closing Date made by the Guarantors party thereto in favor of the Administrative Agent and the other Credit Parties, as ratified pursuant to the Confirmation Agreement, (ii) the Canadian Guaranty, and (iii) each other Guaranty hereafter made by a Guarantor in favor of the Administrative Agent and the Lenders, in form reasonably satisfactory to the Administrative Agent.

"Factored Receivables" means any Accounts originally owed or owing by a Loan Party to another Person which have been purchased by or factored with Wells Fargo or any of its Affiliates pursuant to a factoring arrangement or otherwise with the Person that sold the goods or rendered the services to the Loan Party which gave rise to such Account.

"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), and (a) any current or future regulations or official interpretations thereof, (b) any agreements entered into pursuant to Section 1471(b)(1) of the Code, and (c) any intergovernmental agreement entered into by the United States (or any fiscal or regulatory legislation, rules, or practices adopted pursuant to any such intergovernmental agreement entered into in connection therewith).

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of recognized standing selected by it (and, if any

such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

"Fee Letter" means the letter agreement, dated as of the Restatement Date, among the Borrowers and the Agents, as such letter agreement is amended, modified or supplemented from time to time following the Restatement Date.

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

"Fiscal Month" means any fiscal month of any Fiscal Year, which month shall generally end on the Saturday closest to the last day of each calendar month in accordance with the fiscal accounting calendar of the Loan Parties.

"Fiscal Quarter" means any fiscal quarter of any Fiscal Year, which quarters shall generally end on the Saturday closest to the last day of each April, July, October and January of such Fiscal Year in accordance with the fiscal accounting calendar of the Loan Parties.

"Fiscal Year" means the fifty-two (52) or fifty-three (53) week period that ends on the Saturday closest to January 31st of each calendar year.

"Fixed Rate Borrowing" means a Borrowing comprised of LIBO Rate Loans or BA Rate Loans.

"Fixed Rate Loan Notice" means a notice for a Fixed Rate Borrowing or continuation pursuant to Section 2.02(b), which shall be substantially in the form of Exhibit A.

"Flood Certificate" means a "Standard Flood Hazard Determination Form" of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

"FMV" means, as to any Eligible Real Estate, the fair market value of such Eligible Real Estate as set forth in the most recent appraisal of such Eligible Real Estate as determined from time to time by an independent appraisal firm engaged by, and acceptable to, the Administrative Agent.

"Foreign Assets Control Regulations" has the meaning set forth in Section 10.22.

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

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

"Foreign Vendor Agreement" means an agreement between a Foreign Vendor and the Collateral Agent in form and substance satisfactory to the Collateral Agent and pursuant to which,

among other things, the parties shall agree upon their relative rights with respect to In-Transit Inventory of a Borrower purchased from such Foreign Vendor.

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

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

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

"Governmental Authority" means the government of the United States, Canada or any other nation, or of any political subdivision thereof, whether state, provincial, municipal 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). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" means each Subsidiary of the Lead Borrower listed on Schedule 1.01 annexed hereto and each other Subsidiary of the Lead Borrower that shall be required to execute and deliver a Facility Guaranty or Facility Guaranty supplement pursuant to Section 6.12.

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

"Increase Effective Date" shall have the meaning provided in Section 2.15(d).

"Increased Financial Reporting Event" means if at any time Excess Availability is less than the greater of (i) 25% of the Loan Cap at such time, or (ii) $75,000,000.

"Increased Lender" shall have the meaning provided in Section 2.15(f).

"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, payable in accordance with customary trade practices);

(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 in respect of Capital Lease Obligations of such Person, but excluding any obligations of such Person in respect of operating leases;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person (including, without limitation, Disqualified Stock), or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the

greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

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

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

"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 the foregoing clause (a), Other Taxes.

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

"Information" has the meaning specified in Section 10.07.

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

"Interest Payment Date" means (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a LIBO Rate Loan or BA Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the first day of each month (or if such day is not a Business Day, on the next succeeding Business Day) and the Maturity Date.

"Interest Period" means, as to each LIBO Rate Loan and BA Rate Loan, the period commencing on the date such LIBO Rate Loan or BA Rate Loan is disbursed or converted to or

continued as a LIBO Rate Loan or BA Rate Loan and ending on the date one, two, three or six months thereafter, as selected by the Lead Borrower in its Fixed Rate Loan Notice; provided that:

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

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

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

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

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

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

"Inventory Reserves" means such reserves as may be established from time to time by the Administrative Agent in the Administrative Agent's reasonable discretion with respect to the determination of the saleability, at retail, of the Eligible Inventory or which reflect such other factors as affect the realizable value of the Eligible 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.

"Investment Grade Account Debtor" means an account debtor that, at the time of determination, as a corporate credit rating and/or family rating, as applicable, of BBB- or higher by S&P or Baa3 or higher by Moody's.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any version or revision thereof accepted by the L/C Issuer for use.

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

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

"Judgment Currency" has the meaning specified in Section 10.27.

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

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

"L/C Issuer" means (a) Wells Fargo Bank in its capacity as issuer of U.S. Letters of Credit hereunder, or any successor issuer of U.S. Letters of Credit hereunder (which successor may only be a U.S. Lender selected by the Administrative Agent in its discretion), (b) Wells Fargo Canada, including, to the extent applicable, represented by or acting for, through or on behalf of a Canadian Underlying Issuer, in its capacity as issuer of Canadian Letters of Credit hereunder, or any successor issuer of Canadian Letters of Credit hereunder (which successor may only be a Canadian Lender selected by the Administrative Agent in its discretion), and (c) any other Lender selected by the Lead Borrower in its discretion with the consent of the Administrative Agent and such Lender (which consent shall not be unreasonably withheld). The L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates or branches of the L/C Issuer and/or for such Affiliate or branch to act as an advising, transferring, confirming and/or nominated bank in connection with the issuance or administration of any such Letter of Credit, in which case the term

"L/C Issuer" shall include any such Affiliate or branch with respect to Letters of Credit issued by such Affiliate or branch.

"L/C Obligations" means U.S. L/C Obligations and/or Canadian L/C Obligations as the context requires.

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

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

"Lender" has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line 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 Administrative Agent. A Lender may designate a different Lending Office with respect to its Canadian Commitment and its U.S. Commitment.

"Letter of Credit" means each Standby Letter of Credit and each Commercial Letter of Credit issued hereunder by the L/C Issuer. Without limiting the foregoing, all Existing Letters of Credit shall be deemed to have been issued hereunder and shall for all purposes be deemed to be "Letters of Credit" 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 Disbursement" means a payment made by the L/C Issuer pursuant to a Letter of Credit.

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

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

"Letter of Credit Indemnified Costs" has the meaning specified in Section 2.03(f).

"Letter of Credit Related Person" has the meaning specified in Section 2.03(f).

"Letter of Credit Sublimit" means an amount equal to $50,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments. A permanent reduction of the Aggregate Commitments shall not require a corresponding pro rata reduction in the Letter of Credit Sublimit; provided, however, that if the Aggregate 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 the Lead Borrower's option, less than) the Aggregate Commitments.

"LIBO Rate" means for any Interest Period with respect to a LIBO Rate Loan, the rate per annum as published by ICE Benchmark Administration Limited (or any successor page or other commercially available source as the Administrative Agent may designate from time to time) as of 11:00 a.m., London time, two Business Days prior to the commencement of the requested Interest Period, for a term, and in an amount, comparable to the Interest Period and the amount of the LIBO Rate Loan requested (whether as an initial LIBO Rate Loan or as a continuation of a LIBO Rate Loan or as a conversion of a Base Rate Loan to a LIBO Rate Loan) by Borrowers in accordance with this Agreement (and, if any such published rate is below zero, then the rate shall be deemed to be zero). Each determination of the LIBO Rate shall be made by the Administrative Agent and shall be conclusive in the absence of manifest error.

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

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

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

"Loan" means a Canadian Loan and/or a U.S. Loan as the context requires.

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

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

"Loan Documents" means this Agreement, each Note, each Issuer Document, the Fee Letter, all Borrowing Base Certificates, the Blocked Account Agreements, the Credit Card Notifications, the Security Documents, each Request for Credit Extension, the Confirmation Agreement, each Facility Guaranty and any other instrument or agreement now or hereafter executed and delivered in connection herewith, or in connection with any transaction arising out of any Cash Management Services and Bank Products provided by a Lender or any of its Affiliates or branches, each as amended and in effect from time to time.

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

"Margin Stock" is as defined in Regulation U of the FRB as in effect from time to time.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the results of operations, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Loan Parties and their Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material impairment of the rights and remedies of the Agents or the Lenders under any Loan Document or a material adverse effect on (i) the Collateral, (ii) the validity, perfection or priority of any Lien granted by any Loan Party in favor of any Agent on any material portion of the Collateral, or (iii) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then existing events would result in a Material Adverse Effect.

"Material Contract" means, with respect to any Person, each contract to which such Person is a party, the termination or breach of which would be reasonably likely to result in a Material Adverse Effect.

"Material Indebtedness" means Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding $3,000,000. For purposes of determining the amount of Material Indebtedness at any time, the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof.

"Maturity Date" means May 9, 2024.

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

"Measurement Period" means, at any date of determination, the most recently completed trailing twelve (12) Fiscal Months.

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

"Mortgage" means the Mortgage on the Alabama Property by Services Company in favor of the Collateral Agent.

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

"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.

"Net Proceeds" means:

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

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

"New Headquarters Lease" means that certain Lease Agreement, dated as of March 11, 2009, by and between 500 Plaza Drive Corp., as the landlord, and Services Company, as the tenant, for the leased premises located at 500 Plaza Drive, Secaucus, New Jersey (as modified pursuant to the terms of the New Headquarters Lease Side Letter), as amended, modified, supplemented, restated or extended and in effect from time to time.

"New Headquarters Lease Guaranty" means that certain Guaranty, dated as of March 11, 2009, made by the Lead Borrower in favor of 500 Plaza Drive Corp. (as modified pursuant to the terms of the New Headquarters Lease Side Letter), pursuant to which the Lead Borrower guarantees the payment and performance of all obligations of Services Company under the New Headquarters Lease, in the form attached hereto as Schedule 1.04.

"New Headquarters Lease Side Letter" means that certain letter agreement, dated as of March 11, 2009, by and among the Lead Borrower, Services Company and 500 Plaza Drive Corp., in the form attached hereto as Schedule 1.05.

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

"Non-Defaulting Lender" means each Lender other than a Defaulting Lender.

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

"Note" means a promissory note made by the Borrowers in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit C.

"NPL" means the National Priorities List under CERCLA.

"NRLV" means the net appraised retail liquidation value of the Borrowers' Inventory (expressed as a percentage of the Cost of such Inventory) as determined from time to time by an independent appraiser engaged by the Administrative Agent.

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

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

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

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

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

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

"Overadvance" means a Credit Extension to the extent that, immediately after its having been made:

(a) as regards the U.S. Borrowers, such Credit Extension results in the U.S. Total Outstandings exceeding the lesser of the Revolving Credit Ceiling or the U.S Borrowing Base at such time;

(b) as regards the Canadian Borrowers, such Credit Extension results in the Canadian Total Outstandings exceeding the lesser of the Canadian Revolving Credit Ceiling or the Canadian Borrowing Base at such time; or

(c) as regards any Borrower, such Credit Extension results in the Total Outstandings exceeding the lesser of the Revolving Credit Ceiling or the Aggregate Borrowing Base at such time.

"Patriot Act" has the meaning specified in Section 5.27.

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

"Payment Conditions" means, at the time of determination with respect to any transaction or payment to which the Payment Conditions applies, that (a) no Default or Event of Default has occurred and is continuing or would arise as a result of such transaction or payment, and (b) at least five (5) days prior to the consummation of such transaction or the making of such payment, the Lead Borrower shall have provided to the Administrative Agent a certificate signed by a Responsible Officer of the Lead Borrower, in form and substance reasonably satisfactory to the Administrative Agent, certifying that:

(i) either:

(A) Excess Availability immediately prior to, and projected pro forma Excess Availability (measured as of the end of each Fiscal Month) for the twelve Fiscal Months immediately following, and after giving effect to, such transaction or payment shall be equal to or greater than twenty (20%) percent of the lesser of (x) the Aggregate Commitments and (y) the Aggregate Borrowing Base, or

(B) (1) Excess Availability immediately prior to, and projected pro forma Excess Availability (measured as of the end of each Fiscal Month) for the twelve Fiscal Months immediately following, and after giving effect to, such transaction or payment shall be equal to or greater than fifteen (15%) percent of the lesser of (x) the Aggregate Commitments and (y) the Aggregate Borrowing Base, and (2) the Consolidated Fixed Charge Coverage Ratio immediately prior to, and the projected pro forma Consolidated Fixed Charge Coverage Ratio (measured as of the end of each Fiscal Month)

for the twelve (12) Fiscal Months immediately following, and after giving effect to, the proposed transaction or payment, shall be equal to or greater than 1.00:1.00, and

(ii) the Loan Parties, on a Consolidated basis, are, and will continue to be, Solvent after giving effect to such transaction or payment.

"PBGC" means the Pension Benefit Guaranty Corporation.

"PCAOB" means the Public Company Accounting Oversight Board.

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

"Permitted Acquisition" means an Acquisition in which all of the following conditions are satisfied:

(a) No Default or Event of Default has occurred and is continuing or, immediately following such Acquisition or after taking into account the pro forma financials, would result from the consummation of such Acquisition;

(b) Such Acquisition shall have been approved by the Board of Directors of the Person (or similar governing body if such Person is not a corporation) which is the subject of such Acquisition and such Person shall not have announced that it will oppose such Acquisition or shall not have commenced any action which alleges that such Acquisition shall violate applicable Law;

(c) The Lead Borrower shall have furnished the Administrative Agent with thirty (30) days' prior written notice of such intended Acquisition and shall have furnished the Administrative Agent with a current draft of the acquisition documents (and final copies thereof as and when executed), a summary of any due diligence undertaken by the Loan Parties in connection with such Acquisition, appropriate financial statements of the Person which is the subject of such Acquisition, pro forma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month for the acquired Person, individually, and on a Consolidated basis with all Loan Parties), and such other information as the Administrative Agent may reasonably require, all of which shall be reasonably satisfactory to the Administrative Agent;

(d) Either (i) the legal structure of the Acquisition shall be acceptable to the Administrative Agent in its discretion, or (ii) the Loan Parties shall have provided the Administrative Agent with a solvency opinion from an unaffiliated third party valuation firm reasonably satisfactory to the Administrative Agent;

(e) After giving effect to the Acquisition, if the Acquisition is an Acquisition of the Equity Interests, a Loan Party shall acquire and own, directly or indirectly, a majority of the Equity Interests in the Person being acquired and shall Control a majority of any voting interests or shall otherwise Control the governance of the Person being acquired;

(f) If the assets acquired in such Acquisition are to be included in the Borrowing Base, the Administrative Agent shall have received (i) the results of appraisals of the assets (or the assets of the Person) to be acquired in such Acquisition and of a commercial finance examination of the Person which is (or whose assets are) being acquired, and (ii) such other due diligence as the Administrative Agent may reasonably require, all of the results of the foregoing to be reasonably satisfactory to the Administrative Agent;

(g) Any assets acquired shall be utilized in, and if the Acquisition involves a merger, amalgamation, consolidation or Acquisition of Equity Interests, the Person which is the subject of such Acquisition shall be engaged in, a business otherwise permitted to be engaged in by a Borrower under this Agreement;

(h) If the Person which is the subject of such Acquisition will be maintained as a Subsidiary of a Loan Party, or if the assets acquired in an acquisition will be transferred to a Subsidiary which is not then a Loan Party, such Subsidiary shall have been joined as a "Borrower" hereunder or as a Guarantor, as the Administrative Agent shall determine, and the Collateral Agent shall have received a security interest and/or mortgage interest in such Subsidiary's Equity Interests, Inventory, Accounts and other property of the same nature as constitutes collateral under the Security Documents (subject only to Permitted Encumbrances having priority by operation of law); and

(i) After giving effect to such Acquisition, the Payment Conditions shall be satisfied.

"Permitted Disposition" means any of the following:

(a) Dispositions of Inventory in the ordinary course of business, including (i) liquidations or other Dispositions of Inventory in connection with Store closings in the ordinary course of business and (ii) Dispositions of Inventory in wholesale transactions and sales to franchisees, provided that no such sale shall be made for and amount below cost;

(b) bulk sales or other Dispositions of the Inventory of a Loan Party not in the ordinary course of business in connection with Store closings, at arm's length, provided, that such Store closures and related Inventory Dispositions shall not exceed (i) in any Fiscal Year of the Lead Borrower and its Subsidiaries, five percent (5%) of the number of the Loan Parties' Stores as of the beginning of such Fiscal Year (net of new Store openings) and (ii) in the aggregate from and after the Restatement Date, ten percent (10%) of the number of the Loan Parties' Stores in existence as of the Restatement Date (net of new Store openings), provided further that all sales of Inventory in connection with Store closings shall be in accordance with liquidation agreements and with professional liquidators reasonably acceptable to the Agents; provided further that all Net Proceeds received in connection

therewith are applied to the Obligations if then required in accordance with Section 2.05 hereof;

(c) (x) non-exclusive licenses of Intellectual Property of a Loan Party or any of its Subsidiaries, (y) exclusive licenses of Intellectual Property within the United States or Canada in connection with wholesale arrangements (but not, for the avoidance of doubt, in connection with retail store operations), and (z) exclusive licenses of Intellectual Property in jurisdictions outside of the United States and Canada for the use of such Intellectual Property, in each case of clauses (x), (y) and (z) on an arms' length basis in the ordinary course of business and on terms and conditions that do not restrict the Agents' right to utilize such Intellectual Property in connection with any realization on the Collateral as set forth in the applicable Security Documents in a manner consistent with the most recent appraisal obtained by the Administrative Agent in accordance with Section 6.10 hereof;

(d) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business; provided that, if requested by the Agents, the Agents shall have entered into an intercreditor agreement with the Person operating such licensed department on terms and conditions reasonably satisfactory to the Agents;

(e) (i) Dispositions of Equipment in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of a Loan Party, no longer useful or necessary in its business or that of any Subsidiary and is not replaced with similar property having at least equivalent value and (ii) other Dispositions of Equipment having a fair market value not to exceed $500,000 in the aggregate in any Fiscal Year;

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

(g) sales, transfers and Dispositions of or by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party;

(h) as long as no Default or Event of Default shall have occurred and be continuing or would arise therefrom, the Alabama Capital Lease; provided that the Collateral Agent shall have received a Collateral Access Agreement from the lessor under the Alabama Capital Lease; and

(i) as long as no Default or Event of Default shall have occurred and be continuing or would arise therefrom, the Alabama Sale-Leaseback Transaction; provided that (i) such sale is made for fair market value, (ii) the Net Proceeds paid in cash are in an amount at least equal to the greater of the amounts advanced, or available to be advanced, against the Alabama Property under the U.S. Borrowing Base, (iii) all Net Proceeds received in connection with any such transaction are applied to the Obligations, and (iv) the Collateral Agent shall have received a Collateral Access Agreement from the purchaser of the Alabama Property.

Notwithstanding the foregoing or anything to the contrary contained herein, (x) in the event of a Disposition otherwise permitted hereunder of Intellectual Property that is material to the business of the Loan Parties ("Material Intellectual Property"), such Disposition shall not be a Permitted Disposition unless the terms of such Disposition would not restrict the Agents' right to utilize such Material Intellectual Property in connection with any realization on the Collateral as set forth in the applicable Security Documents in a manner consistent with the most recent appraisal obtained by the Administrative Agent in accordance with Section 6.10 hereof, and (y) no Loan Party nor any Subsidiary shall sell, transfer or otherwise dispose of any Material Intellectual Property other than as provided in clause (x) (in each case, pursuant to a Disposition, a Permitted Investment, a Permitted Encumbrance or otherwise) without the consent of the Administrative Agent and the Required Lenders.

"Permitted Encumbrances" means:

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

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

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

(d) Liens or deposits to secure the performance of bids, trade contracts and leases (other than obligations for borrowed money), 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 a Loan Party and such other minor title defects or survey matters that are disclosed by current surveys that, in each case, do not materially interfere with the current use of the real property;

(g) Liens existing on the date hereof and listed on Schedule 7.01 and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased, (iii) the direct or any contingent obligor

with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is otherwise permitted hereunder;

(h) Liens on fixed or capital assets acquired by any Loan Party which are permitted under clause (d) of the definition of Permitted Indebtedness so long as (i) the Indebtedness secured thereby does not exceed the cost of acquisition of such fixed or capital assets and (ii) such Liens shall not extend to any other property or assets of the Loan Parties;

(i) Liens in favor of the Collateral Agent;

(j) Landlords' and lessors' Liens in respect of rent not in default;

(k) Possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the date hereof and Permitted Investments, provided that such liens (a) attach only to such Investments 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;

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

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

(n) [Reserved];

(o) Liens referred to in Schedule B of the Mortgage Policy insuring the Mortgage; and

(p) Liens in favor of customs and revenues authorities imposed by applicable Law arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than thirty (30) days, or (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

provided, however, that, except as provided in any one or more of clauses (a) through (o) above, the term "Permitted Encumbrances" shall not include any Lien securing obligations for borrowed money.

"Permitted Indebtedness" means:

(a) Indebtedness outstanding on the date hereof and listed on Schedule 7.03 and any Permitted Refinancing Indebtedness in respect thereof;

(b) Indebtedness of any Loan Party to any other Loan Party; provided that such Indebtedness shall (i) be evidenced by such documentation as the Administrative Agent may reasonably require, (ii) constitute "Collateral" under this Agreement and the Security Documents, (iii) be on terms (including subordination terms) reasonably acceptable to the Administrative Agent, and (iv) be otherwise permitted pursuant to Section 7.03;

(c) transfers permitted by Section 7.18 and (ii) intercompany Indebtedness incurred in the ordinary course of business between the Loan Parties located within the United States or Canada, on the one hand, and their Affiliates in Puerto Rico and Asia, on the other hand, to the extent otherwise permitted pursuant to clause (h) of the definition of Permitted Investments;

(d) without duplication of Indebtedness described in clause (f) of this definition, so long as the Payment Conditions are satisfied, purchase money Indebtedness of any Loan Party to finance the acquisition of any fixed or capital assets, including the Alabama Capital Lease and other Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and any Permitted Refinancing Indebtedness in respect thereof; provided, however, that, if requested by the Collateral Agent, the Loan Parties shall cause the holders of any such Indebtedness incurred after the Restatement Date to enter into a Collateral Access Agreement;

(e) any liability or obligation of any Borrower to any other Borrower or to any Affiliate of any Borrower, and any liability or obligation of any Affiliate of any Borrower to any Borrower or to any other Affiliate of any Borrower, to reimburse or share the costs of any services or third party expenses in accordance with the terms of any intercompany cost-sharing agreement or arrangement, provided that no Default or Event of Default shall have occurred and be continuing or would arise therefrom;

(f) Subordinated Indebtedness;

(g) Indebtedness incurred in connection with the Alabama Sale-Leaseback Transaction, provided that (i) such sale is made for fair market value, (ii) the Net Proceeds paid in cash are in an amount at least equal to the greater of the amounts advanced or available to be advanced against the Alabama Property under the Borrowing Base, (iii) all Net Proceeds received in connection with any such Indebtedness are applied to the Obligations, and (iv) the Collateral Agent shall have received a Collateral Access Agreement from the purchaser of the Alabama Property;

(h) the Obligations;

(i) [reserved];

(j) [reserved];

(k) [reserved];

(l) the New Headquarters Lease Guaranty;

(m) [reserved];

(n) [reserved];

(o) Indebtedness of any Person that becomes a Subsidiary of a Loan Party in a Permitted Acquisition, which Indebtedness is existing at the time such Person becomes a Subsidiary of a Loan Party (other than Indebtedness incurred solely in contemplation of such Person's becoming a Subsidiary of a Loan Party); and

(p) other unsecured Indebtedness so long as the Payment Conditions are satisfied.

"Permitted Investments" means:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or Canadian government 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 or Canadian government is pledged in support thereof;

(b) commercial paper issued by any Person organized under the laws of any state of the United States or under the laws of Canada or any province thereof and, in each case, (i) 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, and (ii) with maturities of not more than 180 days from the date of acquisition thereof;

(c) time deposits with, or insured certificates of deposit, guaranteed investment certificates or bankers' acceptances of, any commercial bank that (i) (A) is a Lender, (B) is organized under the laws of the United States, 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, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, or (C) is organized under the federal laws of Canada, (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 180 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, or similar applicable Law in Canada 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 Restatement Date, and set forth on Schedule 7.02, but not any increase in the amount thereof or any other modification of the terms thereof;

(g) (i) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by any Loan Party and its Subsidiaries in any other Loan Party, and (iii) additional Investments by any Loan Party in Subsidiaries that are not Loan Parties so long as the Payment Conditions are satisfied;

(h) so long as no Event of Default shall have occurred and be continuing, or would result therefrom, the Lead Borrower may make loans and advances to its Subsidiaries in an aggregate amount not to exceed $5,000,000 at any time outstanding;

(i) intercompany loans and advances or other intercompany Indebtedness permitted pursuant to clauses (b), (c), (e), (i) and (j) of the definition of Permitted Indebtedness;

(j) 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;

(k) Guarantees constituting Permitted Indebtedness;

(l) 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;

(m) so long as no Event of Default shall have occurred and be continuing, or would result therefrom, (i) loans and advances to officers, directors and employees of the Loan Parties and Subsidiaries in the ordinary course of business for travel, entertainment, relocation and analogous business purposes, and (ii) other loans and advances to officers, directors and employees of the Loan Parties and Subsidiaries in an aggregate amount not to exceed $6,000,000 at any time outstanding;

(n) other Investments pursuant to the TCP Investment Policy; and

(o) Investments constituting Permitted Acquisitions;

provided, however, that notwithstanding the foregoing, after the occurrence and during the continuance of a Cash Dominion Event, no such Investments specified in clauses (a) through (e) shall be permitted unless such Investments are pledged to the Collateral Agent as additional Collateral for the Obligations pursuant to such agreements as may be reasonably required by the Collateral Agent.

"Permitted Overadvance" means an Overadvance made by the Administrative Agent (including through Wells Fargo Canada as regards the Canadian Loan Parties), in its discretion, which:

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

(b) Together with all other Permitted Overadvances then outstanding, shall not (i) exceed ten percent (10%) of (A) the Revolving Credit Ceiling as regards U.S. Loan Parties and (B) the Canadian Revolving Credit Ceiling as regards Canadian Loan Parties at any time or (ii) unless a Liquidation is occurring, remain outstanding for more than forty-five (45) consecutive Business Days, unless in each case, the Required Lenders otherwise agree;

provided however, that the foregoing shall not (i) modify or abrogate any of the provisions of Section 2.03 regarding the Lenders' obligations with respect to Letters of Credit or Section 2.04 regarding the Lenders' obligations with respect to Swing Line Loans, or (ii) result in any claim or liability against the Administrative 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; provided further that in no event shall the Administrative Agent make an Overadvance, if after giving effect thereto, the principal amount of the Credit Extensions would exceed the Aggregate Commitments (as in effect prior to any termination of the Commitments pursuant to Section 2.06 or Section 8.02 hereof).

"Permitted Refinancing Indebtedness" means, with respect to any Person, any refinancing, refunding, renewal or extension of any Indebtedness of such Person (or any successor of such Person); provided that (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder, and the direct or contingent obligor with respect thereto is not changed as a result of or in connection with such refinancing, refunding, renewal or extension, (ii) the result of such extension, renewal or replacement shall not be an earlier maturity date or decreased weighted average life of such Indebtedness, (iii) the terms relating to principal amount, amortization, maturity, and collateral (if any), of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement

entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate, (iv) no Permitted Refinancing Indebtedness shall have direct or indirect obligors who were not also obligors of the Indebtedness being refinanced, refunded, renewed or extended, or greater guarantees or security, than the Indebtedness being refinanced, refunded, renewed or extended, and (v) if the Indebtedness being refinanced, refunded, renewed or extended is Subordinated Indebtedness, such refinancing, refunding, renewal or extension (A) is subordinated in right of payment to the Obligations on terms at least as favorable, taken as a whole, to the Lenders as those contained in the documentation governing the Subordinated Indebtedness being refinanced, refunded, renewed or extended, and (B) contains covenants and events of default that are not more restrictive taken as a whole than the covenants and events of default contained in the documentation governing the Indebtedness being refinanced (as determined in good faith by the Lead Borrower).

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

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

"Platform" has the meaning specified in Section 6.02.

"Portal" has the meaning specified in Section 2.02.

"PPSA" means the Personal Property Security Act (Ontario), including the regulations and minister's orders made pursuant thereto, provided that if perfection or the effect of perfection or non-perfection or the priority of any Lien created hereunder or under any other Loan Document on the Collateral is governed by the personal property security legislation or other applicable legislation with respect to personal property security in effect in a jurisdiction in Canada other than the Province of Ontario, "PPSA" means the Personal Property Security Act or such other applicable legislation (including the Civil Code of Quebec and the regulations thereunder) in effect from time to time in such other jurisdiction in Canada for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"Prepayment Event" means:

(a) Any sale, transfer or other Disposition (including, without limitation, any Disposition of the Alabama Property in connection with the Alabama Sale-Leaseback Transaction, but excluding any Disposition permitted pursuant to clauses (a), (c), (d), (e), (f) and (g) of the definition of Permitted Dispositions) of any property or asset of a Loan Party; provided that any individual Disposition for which any Loan Party or any of its

Subsidiaries receives Net Proceeds in an amount not to exceed $2,500,000 prior to the occurrence of a Cash Dominion Event shall not be deemed a Prepayment Event;

(b) Any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation, expropriation or similar proceeding of, any property or asset of a Loan Party, unless (i) the proceeds therefrom are required to be paid to the holder of a Lien on such property or asset having priority over the Lien of the Collateral Agent or (ii) prior to the occurrence of a Cash Dominion Event, the proceeds therefrom are utilized for purposes of replacing or repairing the assets in respect of which such proceeds, awards or payments were received within 180 days of the occurrence of the damage to or loss of the assets being repaired or replaced; provided that any individual casualty or other insured damage to, or taking under power of eminent domain or by condemnation, expropriation or similar proceeding of, any property or asset of a Loan Party for which any Loan Party receives Net Proceeds in an amount not to exceed $2,500,000 prior to the occurrence of a Cash Dominion Event shall not be deemed a Prepayment Event;

(c) The issuance by a Loan Party of any Equity Interests, other than any such issuance of Equity Interests (i) to a Loan Party, (ii) as consideration for a Permitted Acquisition or (iii) as a compensatory issuance to any employee, director, or consultant (including under any option plan);

(d) The incurrence by a Loan Party of any Indebtedness for borrowed money other than Permitted Indebtedness; or

(e) The receipt by any Loan Party of any Extraordinary Receipts; provided that the receipt of any individual Extraordinary Receipt in an amount not to exceed $2,500,000 prior to the occurrence of a Cash Dominion Event shall not be deemed a Prepayment Event.

"Provider" has the meaning specified in Section 9.16.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

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

"Realty Reserves" means such reserves as the Administrative Agent from time to time determines in the Administrative Agent's reasonable discretion as being appropriate to reflect the impediments to the Agents' ability to realize upon any Eligible Real Estate. Without limiting the

generality of the foregoing, Realty Reserves may include (but are not limited to) (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 having priority over the Liens of the Collateral Agent.

"Receivables Reserves" means such Reserves as may be established from time to time by the Administrative Agent in its reasonable discretion with respect to the determination of the collectability in the ordinary course of Eligible Trade Receivables and Eligible Franchise Receivables, including, without limitation, on account of dilution.

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

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

"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 9.11(a).

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

"Required Lenders" means, as of any date of determination, Lenders holding 50.1% or more of the Aggregate Commitments or, if the Commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, Lenders holding in the aggregate 50.1% or more of the Total Outstandings (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition); provided that the 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.

"Reserves" means all Inventory Reserves, Availability Reserves, Receivables Reserves and Realty Reserves.

"Responsible Officer" means the chief executive officer, president, chief financial officer or treasurer of a Loan Party or any of the other individuals designated in writing to the Administrative 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, with respect to the Portal, any person authorized and authenticated through the Portal in accordance with the Administrative Agent's procedures for such authentication. 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.

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

"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 Credit Ceiling" means $325,000,000 on and after the Restatement Date, as such amount may be modified in accordance with the terms of this Agreement.

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

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

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

"Sanctions" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the Government of Canada, (c) the United Nations Security Council, (d) the European Union or any European Union member state, (e) Her Majesty's Treasury

of the United Kingdom, or (f) any other Governmental Authority with jurisdiction over any Credit Party or any Loan Party or any of their respective Subsidiaries or Affiliates.

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

"Seasonal Increase Period" means a period of ninety (90) consecutive days elected by the Lead Borrower each year upon thirty (30) days' prior notice to the Administrative Agent.

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

"Security Agreement" means the Amended and Restated Security Agreement dated as of December 20, 2012 among the U.S. Loan Parties and the Collateral Agent, as ratified pursuant to the Confirmation Agreement.

"Security Documents" means the Security Agreement, the Mortgage, the Blocked Account Agreements, the Credit Card Notifications, the Canadian Security Agreement, the deed of hypothec dated as of on or about the Restatement Date among the Canadian Loan Parties and the Collateral Agent, and each other security agreement, deed of hypothec or other instrument or document executed and delivered to the Collateral Agent pursuant to this Agreement or any other Loan Document granting a Lien to secure any of the Obligations.

"Services Company" means The Children's Place Services Company, LLC, a Delaware limited liability company.

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

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

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

"Solvent" and "Solvency" means, with respect to any Person on a particular date, that on such date (a) at fair valuation, all of the properties and assets of such Person are greater than the sum of the debts, including contingent liabilities, of such Person, (b) the present fair saleable value of the properties and assets of such Person is not less than the amount that would be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its properties and assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts beyond such Person's ability to pay as such debts mature, (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or transaction, for which such Person's properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in the industry in which such Person is engaged, and (f) as to any Canadian Loan Party, such Canadian Loan Party

is not an "insolvent person" as defined in the Bankruptcy and Insolvency Act (Canada). The amount of all guarantees at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability.

"Specified Account Debtors" means the account debtors set forth on Schedule 1.06.

"Specified Event of Default" means the occurrence of any Event of Default described in any of Sections 8.01(a), 8.01(b)(i), 8.01(b)(ii), 8.01(d), 8.01(e), 8.01(f), 8.01(g), 8.01(h), 8.01(i), 8.01(j), 8.01(l), 8.01(m), 8.01(n), 8.01(q), 8.01(r) or 8.01(s).

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

"Standard Letter of Credit Practice" means, for the L/C Issuer, any domestic or foreign Law or letter of credit practices applicable in the city in which the L/C Issuer issued the applicable Letter of Credit or, for its branch or correspondent, such Laws and practices applicable in the city in which it has advised, confirmed or negotiated such Letter of Credit, as the case may be, in each case, (a) which letter of credit practices are of banks that regularly issue letters of credit in the particular city, and (b) which laws or letter of credit practices are required or permitted under ISP or UCP, as chosen in the applicable Letter of Credit.

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

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

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

"Stock Repurchase Transaction" has the meaning provided in Section 7.06(c) hereof.

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

"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 Administrative Agent.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company, unlimited liability company or other business entity of which a majority of the shares or

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

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

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

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

"Swing Line" means the U.S. Swing Line and/or the Canadian Swing Line as the context requires.

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

"Swing Line Lender" means the U.S. Swing Line Lender and/or the Canadian Swing Line Lender as the context requires.

"Swing Line Loan" means a U.S. Swing Line Loan and/or a Canadian Swing Line Loan as the context requires.

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

"Swing Line Sublimit" means the U.S. Swing Line Sublimit and/or the Canadian Swing Line Sublimit as the context requires.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority in connection with any and all payments to be made by or on account of any obligation of the Borrowers hereunder or under any other Loan Document, including any interest, additions to tax or penalties applicable thereto.

"TCP Canada Inc." means TCP Canada Inc., a Nova Scotia company.

"TCP IH II, LLC" means TCP IH II, LLC, a Delaware limited liability company, the sole member of which is The Children's Place Canada Holdings, Inc.

"TCP Investment Canada I Corp." means TCP Investment Canada I Corp., a Nova Scotia unlimited liability company, and the sole limited partner of Children's Place Canada.

"TCP Investment Canada II Corp." means TCP Investment Canada II Corp., a Nova Scotia unlimited liability company, the general partner of Children's Place Canada.

"TCP Investment Policy" means the investment policy of the Lead Borrower as reviewed and approved annually by the audit committee of the Lead Borrower and consented to by the Administrative Agent (such consent not to be unreasonably withheld or delayed).

"The Children's Place Canada Holdings, Inc." means The Children's Place Canada Holdings, Inc., a Delaware corporation, and a wholly owned Subsidiary of the Lead Borrower.

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

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

"Trading with the Enemy Act" has the meaning set forth in Section 10.22.

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

"UCC" or "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9; provided further that, if by reason of mandatory provisions of

law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

"UCP" means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any version or revision thereof accepted by the L/C Issuer for use.

"UFCA" has the meaning specified in Section 10.20(d).

"UFTA" has the meaning specified in Section 10.20(d).

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

(a) the Aggregate Borrowing Base;

minus

(b) the aggregate Outstanding Amount of all Credit Extensions.

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"Unintentional Overadvance" means an Overadvance which, to the Administrative 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 Borrowing Base, increase in Reserves or misrepresentation by the Loan Parties.

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

"U.S. Borrowers" means, collectively, the Lead Borrower, Services Company, and each other Domestic Subsidiary who shall from time to time enter into a Joinder Agreement as a U.S. Borrower.

"U.S. Borrowing Base" means, at any time of calculation, an amount equal to:

(a) the face amount of the U.S. Borrowers' Eligible Credit Card Receivables multiplied by ninety percent (90%);

plus

(b) the face amount of the U.S. Borrowers' Eligible Trade Receivables (net of Receivables Reserves applicable thereto) multiplied by ninety percent (90%);

plus

(c) at any time that Excess Availability is greater than $60,000,000, the face amount of the U.S. Borrowers' Eligible Franchise Receivables (net of Receivables Reserves applicable thereto) multiplied by ninety percent (90%); provided that in no event shall the amount available to be borrowed pursuant to this clause (c) exceed $20,000,000;

plus

(d) the Cost of the U.S. Borrowers' Eligible Inventory, net of Inventory Reserves, multiplied by (x) during the Seasonal Increase Period, ninety-two and one-half percent (92.5%) of the NRLV of such Eligible Inventory, and (y) at all other times, ninety percent (90%) of the NRLV of such Eligible Inventory;

plus

(e) the Cost of the U.S. Borrowers' Eligible In-Transit Inventory, net of Inventory Reserves, multiplied by ninety percent (90%) of the NRLV of Eligible In-Transit Inventory; provided that in no event shall the amount available to be borrowed pursuant to this clause (e) exceed 25% of the Loan Cap then in effect;

plus

(f) with respect to any Eligible Letter of Credit of the U.S. Borrowers, the Cost of the Inventory supported by such Eligible Letter of Credit, net of Inventory Reserves, multiplied by the lesser of (i) eighty-five percent (85%) of the NRLV of the Inventory supported by such Eligible Letter of Credit, and (ii) eighty five percent (85%);

plus

(g) the lesser of (i) FMV of the U.S. Borrowers' Eligible Real Estate, net of Realty Reserves, multiplied by sixty percent (60%) and (ii) $15,000,000.00;

plus

(h) the Cost of the U.S. Borrowers' Eligible Warehoused Inventory, net of Inventory Reserves, multiplied by ninety percent (90%) of the NRLV of such Eligible Warehoused Inventory; provided that in no event shall the amount available to be borrowed pursuant to this clause (h) exceed the lesser of (i) ten percent (10%) of the Loan Cap then in effect at such time, or (ii) $20,000,000;

minus

(i) the then amount of all Availability Reserves.

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

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

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

"U.S. L/C Obligations" means, as at any date of determination, the sum of (a) the aggregate undrawn amount of all outstanding U.S. Letters of Credit, plus (b) the aggregate amount of outstanding reimbursement obligations with respect to U.S. Letters of Credit which remain unreimbursed or which have not been paid through a U.S. Loan. For purposes of computing the amounts available to be drawn under any U.S. Letter of Credit, the amount of such U.S. 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 U.S. Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of any Rule under the ISP or any article of the UCP, such U.S. Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"U.S. Lender" means each Lender having a U.S. Commitment, and shall include the U.S. Swing Lender, and shall also include any other Person made a party as to this Agreement pursuant to the provisions of Section 10.01 of this Agreement; and "U.S. Lenders" means each of the Lenders with a U.S. Commitment or any one or more of them.

"U.S. Letter of Credit" means a Letter of Credit issued on behalf of any U.S. Loan Party or any of its Domestic Subsidiaries.

"U.S. Loan" means an extension of credit by a U.S. Lender to the U.S. Borrowers under Article II in the form of a U.S. Committed Loan or a U.S. Swing Line Loan.

"U.S. Loan Party" means U.S. Borrowers and any other Loan Party that is a Domestic Subsidiary.

"U.S. Swing Line" means the revolving credit facility made available by the U.S. Swing Line Lender pursuant to Section 2.04.

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

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

"U.S. Swing Line Sublimit" means an amount equal to the lesser of (a) $20,000,000 or (b) the U.S. Commitments. The U.S. Swing Line Sublimit is part of, and not in addition to, the U.S. Commitments.

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

"Wells Fargo Bank" means Wells Fargo Bank, National Association, a national banking association.

"Wells Fargo Canada" means Wells Fargo Capital Finance Corporation Canada.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

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

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

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

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

(d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (i) the repayment in Dollars or, as applicable in accordance with this Agreement, Canadian 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) and any other contingent Obligation, including indemnification obligations, providing Cash Collateralization) or other collateral as may be requested by any Agent 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 (A) unasserted contingent indemnification Obligations, (B) any Obligations relating to Bank Products (other than Swap Contracts) that, at such time, are allowed by the applicable Bank Product provider to remain outstanding without being required to be repaid or Cash Collateralized or other collateral as may be requested by any Agent, and (C) any Obligations relating to Swap Contracts that, at such time, are allowed by the applicable provider of such Swap Contracts to remain outstanding without being required to be repaid, and (ii) the termination of the Aggregate Commitments and the Loan Documents.

(e) For purposes of any Collateral located in the Province of Quebec or charged by any hypothec and for all other purposes pursuant to which the interpretation or construction of this Agreement or any other Loan Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (i) "personal property" shall include "movable property", (ii) "real property" shall include "immovable property", (iii) "tangible property" shall include "corporeal property", (iv) "intangible property" shall include "incorporeal property", (v) "security interest", "mortgage" and "lien" shall include a "hypothec", "prior claim" and a "resolutory clause", (vi) all references to filing, registering or recording under the UCC or PPSA shall include publication under the Civil Code of Quebec, (vii) all references to "perfection" of or "perfected" liens or security interests shall include a reference to "opposable" or "set up" liens or security interests as against third parties, (viii) any "right of offset", "right of setoff" or similar expression shall include a "right of compensation", (ix) "goods" shall include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (x) an "agent" shall include a "mandatary", (xi) "construction liens" shall include "legal hypothecs", (xii) "joint and several" shall include solidary and "jointly and severally" shall include "solidarily", (xiii) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross fault", (xiv) "beneficial ownership" shall include "ownership on behalf of another as mandatary", (xv) "easement" shall include "servitude", (xvi) "priority" shall include "prior claim", (xvii) "survey" shall include "certificate of location and plan", (xviii) "fee simple title" or "fee owned" shall include "absolute ownership" (xix) "ground lease" shall include an "emphyteusis", (xx) "account" and "accounts receivable" shall include "claims", (xxi) "guarantee" and "guarantor" shall include "suretyship" and "surety", respectively, and (xxii) "foreclosure" shall include "the exercise of a hypothecary right". The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated hereby be drawn up in the English language only and that all other documents contemplated hereunder or relating hereto, including notices, shall also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement*.

1.03 Accounting Terms.

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

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Lead Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrowers 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 Borrowers shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

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

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

1.06 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to be the Stated Amount of such Letter of Credit in effect at such time; provided, however, that, except as otherwise provided in Section 2.03(l), 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 Currency Equivalents Generally. Any amount specified in this Agreement (other than in Article II or as otherwise expressly provided herein or in any of the other Loan Documents) to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.07, the "Spot Rate" for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency. For purposes of this Agreement and the other Loan Documents, where the permissibility of a transaction or determinations of required actions or circumstances depend upon compliance with, or are determined by reference to, amounts stated in Dollars, unless the context of this Agreement or any other Loan Document clearly requires otherwise, such amounts shall be deemed to refer to Dollars and any requisite currency translation shall be based on the Spot Rate and the permissibility of actions already taken shall not be affected by subsequent fluctuations in the Spot Rate. All certificates, reports and notices delivered under this Agreement shall express any amounts, calculations or determinations in Dollars. Wherever in this Agreement and the other Loan Documents in

connection with a borrowing, conversion, continuation or prepayment of a Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Loan or Letter of Credit is to be denominated in Canadian Dollars, such amount shall be the same dollar figure but denominated in Canadian Dollars. Principal, interest, reimbursement obligations, cash collateral for reimbursement obligations, fees, and all other amounts payable to the Agents, Lenders or other Credit Parties under this Agreement and the other Loan Documents shall be payable (except as otherwise specifically provided herein) in the currency in which such Obligations are denominated.

1.08 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.

ARTICLE II.
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Committed Loans; Reserves.

(a) Subject to the terms and conditions set forth herein, each U.S. Lender severally agrees to make loans in Dollars (each such loan, a "U.S. Committed Loan") to the U.S. 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 US. Lender's U.S. Commitment, or (y) such U.S. Lender's Applicable Percentage of the U.S. Borrowing Base; subject in each case to the following limitations:

(i) after giving effect to any U.S. Committed Borrowing, the U.S. Total Outstandings shall not exceed the lesser of (A) the U.S. Commitments, or (B) the U.S. Borrowing Base;

(ii) after giving effect to any U.S. Committed Borrowing, the aggregate Outstanding Amount of the U.S. Committed Loans of any U.S. Lender, plus such U.S. Lender's Applicable Percentage of the Outstanding Amount of all U.S. L/C Obligations, plus such U.S. Lender's Applicable Percentage of the Outstanding Amount of all U.S. Swing Line Loans shall not exceed such U.S. Lender's U.S. Commitment;

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

(iv) the Outstanding Amount of all Credit Extensions shall not at any time exceed the Revolving Credit Ceiling; and

(v) after giving effect to all Credit Extensions to the U.S. Borrowers, no Overadvance shall exist.

Within the limits of each U.S. Lender's U.S. Commitment, and subject to the other terms and conditions hereof, the U.S. Borrowers may borrow under this Section 2.01, prepay under

Section 2.05, and reborrow under this Section 2.01 U.S. Committed Loans may be Base Rate Loans or LIBO Rate Loans, as further provided herein.

(b) Subject to the terms and conditions set forth herein, each Canadian Lender severally agrees to make loans in Dollars or Canadian Dollars (each such loan, a "Canadian Committed Loan") to the Canadian 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 Canadian Lender's Canadian Commitment, or (y) such Canadian Lender's Applicable Percentage of the Canadian Borrowing Base; subject in each case to the following limitations:

(i) after giving effect to any Canadian Committed Borrowing, the Canadian Total Outstandings shall not exceed the lesser of (A) the Canadian Commitments, or (B) the Canadian Borrowing Base;

(ii) after giving effect to any Canadian Committed Borrowing, the aggregate Outstanding Amount of the Canadian Committed Loans of any Canadian Lender, plus such Canadian Lender's Applicable Percentage of the Outstanding Amount of all Canadian L/C Obligations, plus such Canadian Lender's Applicable Percentage of the Outstanding Amount of all Canadian Swing Line Loans shall not exceed such Canadian Lender's Canadian Commitment;

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

(iv) the Outstanding Amount of all Credit Extensions to the Canadian Borrowers shall not at any time exceed the Canadian Revolving Credit Ceiling;

(v) the Outstanding Amount of all Credit Extensions shall not at any time exceed the Revolving Credit Ceiling;

(vi) after giving effect to all Credit Extensions to the Canadian Borrowers, no Overadvance shall exist.

Within the limits of each Canadian Lender's Canadian Commitment, and subject to the other terms and conditions hereof, the Canadian Borrowers may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Canadian Committed Loans may be Base Rate Loans, BA Rate Loans or LIBO Rate Loans, as further provided herein.

(c) The Reserves as of the Restatement Date are identified in the Borrowing Base Certificate delivered pursuant to Section 4.01(c).

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

2.02 Borrowings, Conversions and Continuations of Committed Loans.

(a) U.S. Committed Loans (other than Swing Line Loans) shall be either Base Rate Loans or LIBO Rate Loans and Canadian Committed Loans (other than Swing Line Loans) shall be either Base Rate Loans, BA Rate Loans or LIBO Rate Loans, in each case as the Lead Borrower may request subject to and in accordance with this Section 2.02. All Swing Line Loans shall be only Base Rate Loans. Subject to the

other provisions of this Section 2.02, Committed Borrowings of more than one Type may be incurred at the same time.

(b) Each request for a Committed Borrowing consisting of a Base Rate Loan shall be made by electronic request of the Lead Borrower through the Administrative Agent's Commercial Electronic Office Portal or through such other electronic portal provided by the Administrative Agent (the "Portal"), which must be received by the Administrative Agent not later than (x) 12:00 noon on the requested date of any U.S. Committed Borrowing of Base Rate Loans, and (y) 11:00 a.m. on the requested date of any Canadian Committed Borrowing of Base Rate Loans. The Borrowers hereby acknowledge and agree that any request made through the Portal shall be deemed made by a Responsible Officer of the Borrowers. Each request for a Committed Borrowing consisting of a LIBO Rate Loan or BA Rate Loan shall be made pursuant to the Lead Borrower's submission of a Fixed Rate Loan Notice, which must be received by the Administrative Agent not later than 11:00 a.m. three (3) Business Days prior to the requested date of any Borrowing or continuation of LIBO Rate Loans or BA Rate Loans. Each Fixed Rate Loan Notice shall specify (i) the Type and requested date of the Borrowing or continuation, as the case may be (which shall be a Business Day), (ii) the principal amount of LIBO Rate Loans to be borrowed or continued (which shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof) or the principal amount of BA Rate Loans to be borrowed or continued (which shall be in a principal amount of CAD$1,000,000 or a whole multiple of CAD$500,000 in excess thereof), and (iii) the duration of the Interest Period with respect thereto. If the Lead Borrower fails to specify an Interest Period in the Fixed Rate Loan Notice, it will be deemed to have specified an Interest Period of one month. On the requested date of any LIBO Rate Loan or BA Rate Loan, (i) in the event that Base Rate Loans are outstanding in an amount equal to or greater than the requested LIBO Rate Loan or BA Rate Loan, as applicable, all or a portion of such Base Rate Loans in Dollars shall be automatically converted to a LIBO Rate Loan in the amount requested by the Lead Borrower and all or a portion of such Canadian Base Rate Loans shall be automatically converted to a BA Rate Loan in the amount requested by the Lead Borrower, and (ii) if Base Rate Loans in Dollars are not outstanding in an amount at least equal to the requested LIBO Rate Loan or if Canadian Base Rate Loans are not outstanding in an amount at least equal to the requested BA Rate Loan, the Lead Borrower shall make an electronic request via the Portal for additional applicable Base Rate Loans in an such amount, when taken with the outstanding Base Rate Loans (which shall be converted automatically at such time), as is necessary to satisfy the requested LIBO Rate Loan or BA Rate Loan. If the Lead Borrower fails to make such additional request via the Portal as required pursuant to clause (ii) of the foregoing sentence, then the Borrowers shall be responsible for all amounts due pursuant to Section 3.05 hereof arising on account of such failure. If the Lead Borrower fails to give a timely notice with respect to any continuation of a LIBO Rate Loan or BA Rate Loan, then the applicable Committed Loans shall be converted to Base Rate Loans (if in Canadian Dollars, to Canadian Base Rate Loans), effective as of the last day of the Interest Period then in effect with respect to the applicable LIBO Rate Loans or BA Rate Loans. If no election as to whether a US Loan is to be a Base Rate Loan or a Canadian Loan (denominated in Dollars) or a LIBO Rate Loan is contained in the applicable request, then the requested Revolving Loan shall be a Base Rate Loan. If no election as to whether a Canadian Loan denominated in Canadian Dollars is to be a BA Rate Loan or Canadian Base Rate Loan is contained in the applicable request, then the requested Canadian Revolving Loan shall be a Canadian Base Rate Loan. All requests for a Committed Borrowing which are not made by electronic request of the Lead Borrower through the Portal shall be subject to (and unless the Administrative Agent elects otherwise in the exercise of its sole discretion, such Committed Borrowing shall not be made until the completion of) the Administrative Agent's authentication process (with results satisfactory to the Administrative Agent) prior to the funding of any such requested Committed Loan.

(c) The Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Loans, and if no timely notice of a conversion or continuation is provided by the Lead Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(b). In the case of a Committed Borrowing, each Lender shall make the amount of its Committed Loan available to the

Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall use reasonable efforts to make all funds so received available to the Borrowers in like funds by no later than 4:00 p.m. on the day of receipt by the Administrative Agent either by (i) crediting the account of the applicable Borrowers on the books of the Administrative Agent 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 Administrative Agent by the Lead Borrower.

(d) The Administrative Agent, without the request of the Lead Borrower, may advance any interest, fee, service charge (including direct wire fees), Credit Party Expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document, as and when due and payable, and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby. The Administrative Agent shall advise the Lead Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Administrative Agent shall not constitute a waiver of the Administrative Agent's rights and the Borrowers' obligations under Section 2.05(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) Except as otherwise provided herein, a LIBO Rate Loan may be continued or converted only on the last day of an Interest Period for such LIBO Rate Loan and a BA Rate Loan may be continued or converted only on the last day of an Interest Period for such BA Rate Loan. Upon the occurrence and during the continuance of a Default, the Administrative Agent may, and at the direction of the Required Lenders shall, prohibit Loans from being requested as, converted to or continued as, LIBO Rate Loans or BA Rate Loans.

(f) The Administrative Agent shall promptly notify the Lead Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBO Rate Loans and BA Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Lead Borrower and the Lenders of any change in Wells Fargo Bank's prime rate used in determining the Base Rate or any change of any component rate comprised in the Canadian Base Rate giving rise to a change in the Canadian Base Rate promptly following the public announcement of such change.

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

(h) The Administrative Agent, the Lenders, the Swing Line Lender and the L/C Issuer shall have no obligation to make any Loan or to provide any Letter of Credit if an Overadvance would result. The Administrative Agent may, in its discretion, make Permitted Overadvances without the consent of the Borrowers, the Lenders, the Swing Line Lender and the L/C Issuer and the Borrowers and each Lender and L/C Issuer shall be bound thereby. Any Permitted Overadvance may constitute a Swing Line Loan. A Permitted Overadvance is for the account of the Borrowers and shall constitute a Loan and an Obligation and shall be repaid by the Borrowers in accordance with the provisions of Section 2.05(c). The making of any such Permitted Overadvance on any one occasion shall not obligate the Administrative 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 Administrative Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of Section 2.03 regarding the Lenders' obligations to purchase participations with respect to Letters of Credit or of Section 2.04 regarding the Lenders' obligations to purchase participations with respect to Swing Line Loans. Without limiting the foregoing, the Administrative 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 Administrative Agent with respect to Unintentional Overadvances regardless of the amount of any such Unintentional Overadvances.

2.03 Letters of Credit.

(a) Subject to the terms and conditions of this Agreement, upon the request of the Lead Borrower made in accordance herewith, and prior to the Maturity Date, the L/C Issuer agrees to issue, or, in the case of Canadian Letters of Credit, to cause a Canadian Underlying Issuer (including as a Canadian Lender's agent) a requested Letter of Credit for the account of one or more of the Loan Parties. If the L/C Issuer, at its option, elects to cause a Canadian Underlying Issuer to issue a requested Canadian Letter of Credit, then the L/C Issuer agrees that it will enter into arrangements relative to the reimbursement of such Canadian Underlying Issuer (which may include, among other means, by becoming an applicant with respect to such Canadian Letter of Credit or entering into undertakings or other arrangements that provide for reimbursement of such Canadian Underlying Issuer with respect to drawings under such Canadian Letter of Credit) with respect to Canadian Letters of Credit issued by such Canadian Underlying Issuer. By submitting a request to the L/C Issuer for the issuance of a Letter of Credit, the Borrowers shall be deemed to have requested that the L/C Issuer issue the requested Letter of Credit. Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be (i) irrevocable and be made in writing pursuant to a Letter of Credit Application by a Responsible Officer, (ii) delivered to the L/C Issuer and the Administrative Agent via telefacsimile or other electronic method of transmission reasonably acceptable to the L/C Issuer not later than 11:00 a.m. at least two Business Days (or such other date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the requested date of issuance, amendment, renewal, or extension, and (iii) subject to the L/C Issuer's authentication procedures with results satisfactory to the L/C Issuer. Each such request shall be in form and substance reasonably satisfactory to the Agent and the L/C Issuer and (i) shall specify (A) the amount of such Letter of Credit, (B) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (C) the proposed expiration date of such Letter of Credit, (D) the name and address of the beneficiary of the Letter of Credit, and (E) such other information (including, the conditions to drawing, and, in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit, and (ii) shall be accompanied by such Issuer Documents as the Administrative Agent or the L/C Issuer may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that the L/C Issuer generally requests for Letters of Credit in similar circumstances. The Administrative Agent's records of the content of any such request will be conclusive. Anything contained herein to the contrary notwithstanding, the L/C Issuer may, but shall not be obligated to, issue a Letter of Credit that supports the obligations of a Loan Party or one of its Subsidiaries in respect of (x) a lease of real property to the extent that the face amount of such Letter of Credit exceeds the highest rent (including all rent-like charges) payable under such lease for a period of one year, or (y) an employment contract to the extent that the face amount of such Letter of Credit exceeds the highest compensation payable under such contract for a period of one year.

(b) The L/C Issuer shall have no obligation to issue a U.S. Letter of Credit if, after giving effect to the requested issuance, (i) the U.S. Total Outstandings would exceed the lesser of the U.S. Commitments or the U.S. Borrowing Base, (ii) the aggregate Outstanding Amount of the U.S. Committed Loans of any U.S. Lender, plus such U.S. Lender's Applicable Percentage of the Outstanding Amount of all U.S. L/C Obligations, plus such U.S. Lender's Applicable Percentage of the Outstanding Amount of all U.S. Swing Line Loans would exceed such Lender's U.S. Commitment, or (iii) the Outstanding Amount of the U.S. L/C Obligations would exceed the Letter of Credit Sublimit. The L/C Issuer shall have no obligation to issue a Canadian Letter of Credit if, after giving effect to the requested issuance, (i) the Canadian Total Outstandings would exceed the lesser of the Canadian Commitments or the Canadian Borrowing Base, (ii) the aggregate Outstanding Amount of the Canadian Committed Loans of any Canadian Lender, plus such Canadian Lender's Applicable Percentage of the Outstanding Amount of all Canadian L/C Obligations, plus such Canadian Lender's Applicable Percentage of the Outstanding Amount

of all Canadian Swing Line Loans would exceed such Lender's Canadian Commitment, or (iv) the Outstanding Amount of the Canadian L/C Obligations would exceed the Canadian Letter of Credit Sublimit.

(c) In the event there is a Defaulting Lender as of the date of any request for the issuance of a Letter of Credit, the L/C Issuer shall not be required to issue or arrange for such Letter of Credit to the extent (i) the Defaulting Lender's participation with respect to such Letter of Credit may not be reallocated pursuant to Section 9.15(b), or (ii) the L/C Issuer has not otherwise entered into arrangements reasonably satisfactory to it and the Borrowers to eliminate the L/C Issuer's risk with respect to the participation in such Letter of Credit of the Defaulting Lender, which arrangements may include the Borrowers cash collateralizing such Defaulting Lender's participation with respect to such Letter of Credit in accordance with Section 9.15(b). Additionally, the L/C Issuer shall have no obligation to issue and/or extend a Letter of Credit if (A) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of Law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit or request that the L/C Issuer refrain from the issuance of letters of credit generally or such Letter of Credit in particular, (B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally, (C) the expiry date of such requested Letter of Credit that is a Standby Letter of Credit would occur later than the date that is twelve (12) months after the date of issuance thereof, provided, that, such Standby Letter of Credit may provide for the automatic extension thereof for any number of additional periods each of up to one year in duration, subject to the terms hereof (including, without limitation, clause (E) below and Section 2.03(h)), (D) the expiry date of such requested Letter of Credit that is a Commercial Letter of Credit would occur later than the date that is the earlier of (i) 120 days after the date of the issuance of such Commercial Letter of Credit and (ii) the Letter of Credit Expiration Date, and (E) 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 Administrative Agent may agree) or all the Lenders have approved such expiry date.

(d) Any L/C Issuer (other than Wells Fargo Bank, Wells Fargo Canada (or the Canadian Underlying Issuer) or any of their Affiliates) shall notify the Administrative Agent in writing no later than the Business Day immediately following the Business Day on which such L/C Issuer issued any Letter of Credit; provided that (i) until the Administrative Agent advises any such L/C Issuer that the provisions of Section 4.02 are not satisfied, or (ii) unless the aggregate amount of the Letters of Credit issued in any such week exceeds such amount as shall be agreed by the Administrative Agent and such L/C Issuer, such L/C Issuer shall be required to so notify the Administrative Agent in writing only once each week of the Letters of Credit issued by such L/C Issuer during the immediately preceding week as well as the daily amounts outstanding for the prior week, such notice to be furnished on such day of the week as the Administrative Agent and such L/C Issuer may agree. Each Letter of Credit shall be in form and substance reasonably acceptable to the L/C Issuer, including the requirement that the amounts payable thereunder must be payable in Dollars. If the L/C Issuer makes a payment under a Letter of Credit, the Borrowers shall pay to the Administrative Agent an amount equal to the applicable Letter of Credit Disbursement on the Business Day such Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a Committed Loan hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 4.02 hereof) and, initially, shall bear interest at the rate then applicable to Committed Loans that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be a Committed Loan hereunder, the Borrowers' obligation to pay the amount of such Letter of Credit Disbursement to the L/C Issuer shall be automatically converted into an obligation to pay the resulting Committed Loan. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the L/C Issuer or, to the extent that the Lenders have made payments pursuant to

Section 2.03(e) to reimburse the L/C Issuer, then to such Lenders and the L/C Issuer as their interests may appear.

(e) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.03(d), each Lender agrees to fund its Applicable Percentage of any Committed Loan deemed made pursuant to Section 2.03(d) on the same terms and conditions as if the Borrowers had requested the amount thereof as a Committed Loan and the Administrative Agent shall promptly pay to the L/C Issuer the amounts so received by it from the Lenders. By the issuance of a Letter of Credit (or an amendment, renewal, or extension of a Letter of Credit) and without any further action on the part of the L/C Issuer or the Lenders, the L/C Issuer shall be deemed to have granted to each Lender, and each Lender shall be deemed to have purchased, a participation in each Letter of Credit issued by the L/C Issuer, in an amount equal to its Applicable Percentage of such Letter of Credit, and each such Lender agrees to pay to the Administrative Agent, for the account of the L/C Issuer, such Lender's Applicable Percentage of any Letter of Credit Disbursement made by the L/C Issuer under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the L/C Issuer, such Lender's Applicable Percentage of each Letter of Credit Disbursement made by the L/C Issuer and not reimbursed by Borrowers on the date due as provided in Section 2.03(d), or of any reimbursement payment that is required to be refunded (or that the Administrative Agent or the L/C Issuer elects, based upon the advice of counsel, to refund) to the Borrowers for any reason. Each Lender acknowledges and agrees that its obligation to deliver to the Administrative Agent, for the account of the L/C Issuer, an amount equal to its respective Applicable Percentage of each Letter of Credit Disbursement pursuant to this Section 2.03(e) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of a Default or Event of Default or the failure to satisfy any condition set forth in Section 4.02 hereof. If any such Lender fails to make available to the Administrative Agent the amount of such Lender's Applicable Percentage of a Letter of Credit Disbursement as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and the Administrative Agent (for the account of the L/C Issuer) shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(f) Each Borrower agrees to indemnify, defend and hold harmless each Credit Party (including the L/C Issuer and its branches, Affiliates, and correspondents) and each such Person's respective directors, officers, employees, attorneys and agents (each, including the L/C Issuer, a "Letter of Credit Related Person") (to the fullest extent permitted by Law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), which may be incurred by or awarded against any such Letter of Credit Related Person (other than Taxes, which shall be governed by Article III) (the "Letter of Credit Indemnified Costs"), and which arise out of or in connection with, or as a result of:

(i) any Letter of Credit or any pre-advice of its issuance;

(ii) any transfer, sale, delivery, surrender or endorsement (or lack thereof) of any Drawing Document at any time(s) held by any such Letter of Credit Related Person in connection with any Letter of Credit;

(iii) any action or proceeding arising out of, or in connection with, any Letter of Credit (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under any Letter of Credit, or for the wrongful dishonor of, or honoring a presentation under, any Letter of Credit;

(iv) any independent undertakings issued by the beneficiary of any Letter of Credit;

(v) any unauthorized instruction or request made to the L/C Issuer in connection with any Letter of Credit or requested Letter of Credit, or any error, omission, interruption or delay in such instruction or request, whether transmitted by mail, courier, electronic transmission, SWIFT, or any other telecommunication including communications through a correspondent;

(vi) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated;

(vii) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds or holder of an instrument or document;

(viii) the fraud, forgery or illegal action of parties other than the Letter of Credit Related Person;

(ix) any prohibition on payment or delay in payment of any amount payable by the L/C Issuer to a beneficiary or transferee beneficiary of a Letter of Credit arising out of Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions;

(x) the L/C Issuer's performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation;

(xi) any foreign language translation provided to the L/C Issuer in connection with any Letter of Credit;

(xii) any foreign law or usage as it relates to the L/C Issuer's issuance of a Letter of Credit in support of a foreign guaranty including without limitation the expiration of such guaranty after the related Letter of Credit expiration date and any resulting drawing paid by the L/C Issuer in connection therewith; or

(xiii) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of the Letter of Credit Related Person;

in each case, including that resulting from the Letter of Credit Related Person's own negligence; provided, however, that such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification under clauses (i) through (x) above to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of the Letter of Credit Related Person claiming indemnity. The Borrowers hereby agree to pay the Letter of Credit Related Person claiming indemnity on demand from time to time all amounts owing under this Section 2.03(f). If and to the extent that the obligations of the Borrowers under this Section 2.03(f) are unenforceable for any reason, the Borrowers agree to make the maximum contribution to the Letter of Credit Indemnified Costs permissible under applicable Law. This indemnification provision shall survive termination of this Agreement and all Letters of Credit.

(g) The liability of the L/C Issuer (or any other Letter of Credit Related Person) under, in connection with or arising out of any Letter of Credit (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by the Borrowers that are caused directly by the L/C Issuer's gross negligence or willful misconduct in (i) honoring a presentation under a Letter of Credit that on its face does not at least substantially comply with the terms and conditions of such Letter of Credit, (ii) failing to honor a presentation under a Letter of Credit that strictly complies with the terms and conditions of such Letter of Credit or (iii) retaining Drawing Documents presented under a Letter of Credit. The L/C Issuer shall be deemed to have acted with due diligence and reasonable care if the L/C Issuer's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement. The Borrowers' aggregate remedies against the L/C Issuer and any Letter of Credit Related Person for wrongfully honoring a presentation under any Letter of Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by the Borrowers to the L/C Issuer in respect of the honored presentation in connection with such Letter of Credit under Section 2.03(d), plus interest at the rate then applicable to Base Rate Loans hereunder. The Borrowers shall take action to avoid and mitigate the amount of any damages claimed against the L/C Issuer or any other Letter of Credit Related Person, including by enforcing its rights against the beneficiaries of the Letters of Credit. Any claim by the Borrowers under or in connection with any Letter of Credit shall be reduced by an amount equal to the sum of (x) the amount (if any) saved by the Borrowers as a result of the breach or alleged wrongful conduct complained of; and (y) the amount (if any) of the loss that would have been avoided had the Borrowers taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing the L/C Issuer to effect a cure.

(h) The Borrowers are responsible for the final text of the Letter of Credit as issued by the L/C Issuer, irrespective of any assistance the L/C Issuer may provide such as drafting or recommending text or by the L/C Issuer's use or refusal to use text submitted by the Borrowers. The Borrowers understand that the final form of any Letter of Credit may be subject to such revisions and changes as are deemed necessary or appropriate by the L/C Issuer, and Borrowers hereby consent to such revisions and changes not materially different from the application executed in connection therewith. The Borrowers are solely responsible for the suitability of the Letter of Credit for the Borrowers' purposes. The Borrowers will examine the copy of the Letter of Credit and any other documents sent by the L/C Issuer in connection therewith and shall promptly notify the L/C Issuer (not later than three (3) Business Days following the Borrowers' receipt of documents from the L/C Issuer) of any non-compliance with the Borrowers' instructions and of any discrepancy in any document under any presentment or other irregularity. The Borrowers understand and agree that the L/C Issuer is not required to extend the expiration date of any Letter of Credit for any reason. With respect to any Letter of Credit containing an "automatic amendment" to extend the expiration date of such Letter of Credit, the L/C Issuer, in its sole and absolute discretion, may give notice of nonrenewal of such Letter of Credit and, if the Borrowers do not at any time want the then current expiration date of such Letter of Credit to be extended, the Borrowers will so notify the Administrative Agent and the L/C Issuer at least 30 calendar days before the L/C Issuer is required to notify the beneficiary of such Letter of Credit or any advising bank of such non-extension pursuant to the terms of such Letter of Credit.

(i) The Borrowers' reimbursement and payment obligations under this Section 2.03 are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including:

(i) any lack of validity, enforceability or legal effect of any Letter of Credit, any Issuer Document, this Agreement or any Loan Document, or any term or provision therein or herein;

(ii) payment against presentation of any draft, demand or claim for payment under any Drawing Document that does not comply in whole or in part with the terms of the applicable Letter of Credit or which proves to be fraudulent, forged or invalid in any respect or any statement

therein being untrue or inaccurate in any respect, or which is signed, issued or presented by a Person or a transferee of such Person purporting to be a successor or transferee of the beneficiary of such Letter of Credit;

(iii) the L/C Issuer or any of its branches or Affiliates being the beneficiary of any Letter of Credit;

(iv) the L/C Issuer or any correspondent honoring a drawing against a Drawing Document up to the amount available under any Letter of Credit even if such Drawing Document claims an amount in excess of the amount available under the Letter of Credit;

(v) the existence of any claim, set-off, defense or other right that any Loan Party or any of its Subsidiaries may have at any time against any beneficiary or transferee beneficiary, any assignee of proceeds, the L/C Issuer or any other Person;

(vi) the L/C Issuer or any correspondent honoring a drawing upon receipt of an electronic presentation under a Letter of Credit requiring the same, regardless of whether the original Drawing Documents arrive at the L/C Issuer's counters or are different from the electronic presentation;

(vii) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing that might, but for this Section 2.03(i), constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, any Borrower's or any of its Subsidiaries' reimbursement and other payment obligations and liabilities, arising under, or in connection with, any Letter of Credit, whether against the L/C Issuer, the beneficiary or any other Person; or

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

provided, however, that subject to Section 2.03(g) above, the foregoing shall not release the L/C Issuer from such liability to the Borrowers as may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction against the L/C Issuer following reimbursement or payment of the obligations and liabilities, including reimbursement and other payment obligations, of the Borrowers to the L/C Issuer arising under, or in connection with, this Section 2.03 or any Letter of Credit.

(j) Without limiting any other provision of this Agreement, the L/C Issuer and each other Letter of Credit Related Person (if applicable) shall not be responsible to the Borrowers for, and the L/C Issuer's rights and remedies against the Borrowers and the obligation of the Borrowers to reimburse the L/C Issuer for each drawing under each Letter of Credit shall not be impaired by:

(i) honor of a presentation under any Letter of Credit that on its face substantially complies with the terms and conditions of such Letter of Credit, even if the Letter of Credit requires strict compliance by the beneficiary;

(ii) honor of a presentation of any Drawing Document that appears on its face to have been signed, presented or issued (A) by any purported successor or transferee of any beneficiary or other Person required to sign, present or issue such Drawing Document or (B) under a new name of the beneficiary;

(iii) acceptance as a draft of any written or electronic demand or request for payment under a Letter of Credit, even if nonnegotiable or not in the form of a draft or notwithstanding any requirement that such draft, demand or request bear any or adequate reference to the Letter of Credit;

(iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness or legal effect of any Drawing Document (other than the L/C Issuer's determination that such Drawing Document appears on its face substantially to comply with the terms and conditions of the Letter of Credit);

(v) acting upon any instruction or request relative to a Letter of Credit or requested Letter of Credit that the L/C Issuer in good faith believes to have been given by a Person authorized to give such instruction or request;

(vi) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation or any delay in giving or failing to give notice to the Borrowers;

(vii) any acts, omissions or fraud by, or the insolvency of, any beneficiary, any nominated person or entity or any other Person or any breach of contract between any beneficiary and any Borrower or any of the parties to the underlying transaction to which the Letter of Credit relates;

(viii) assertion or waiver of any provision of the ISP or UCP that primarily benefits an issuer of a letter of credit, including any requirement that any Drawing Document be presented to it at a particular hour or place;

(ix) payment to any presenting bank (designated or permitted by the terms of the applicable Letter of Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;

(x) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where the L/C Issuer has issued, confirmed, advised or negotiated such Letter of Credit, as the case may be;

(xi) honor of a presentation after the expiration date of any Letter of Credit notwithstanding that a presentation was made prior to such expiration date and dishonored by the L/C Issuer if subsequently the L/C Issuer or any court or other finder of fact determines such presentation should have been honored;

(xii) dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor; or

(xiii) honor of a presentation that is subsequently determined by the L/C Issuer to have been made in violation of international, federal, state, provincial or local restrictions on the transaction of business with certain prohibited Persons;

(k) Upon the request of the Administrative Agent, (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Obligation that remains outstanding (other than L/C Obligations consisting of the remaining undrawn stated amount

resulting from a partial drawing), or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrowers shall, in each case, promptly Cash Collateralize the then Outstanding Amount of all L/C Obligations. Sections 2.05 and 8.02(c) set forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this Section 2.03, Section 2.05 and Section 8.02(c), "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances in an amount equal to 105% (in the case of Letters of Credit denominated in a currency other than Dollars, in an amount at least equal to 110%) of the Outstanding Amount of all L/C Obligations, pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer (which documents are hereby Consented to by the Lenders). Derivatives of such term have corresponding meanings. The Borrowers hereby grant to the Collateral Agent a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Wells Fargo Bank or an account maintained by the Administrative Agent. If at any time the Administrative Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Administrative 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 Administrative Agent, pay to the Administrative 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 Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the L/C Issuer and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations. If the Borrowers fail to provide Cash Collateral as required by this Section 2.03, Section 2.05 or Section 8.02(c), the Lenders may (and, upon direction of the Administrative Agent, shall) advance, as Committed Loans, the amount of the cash collateral required pursuant to the terms of this Agreement so that the then Outstanding Amount of all L/C Obligations is cash collateralized in accordance with the terms hereof (whether or not the Aggregate Commitments have terminated, an Overadvance exists or the conditions in Section 4.02 are satisfied).

(l) The Borrowers shall pay to the Administrative Agent, for the account of each Lender in accordance with its Applicable Percentage, a Letter of Credit fee (the "Letter of Credit Fee") (i) for each Commercial Letter of Credit, equal to the Applicable Margin multiplied by the daily Stated Amount under such Letter of Credit, and (ii) for each Standby Letter of Credit, equal to the Applicable Margin multiplied by the daily Stated Amount under such Letter of Credit. For purposes of computing the daily Stated Amount available to be drawn under any Letter of Credit, the Stated Amount of the Letter of Credit shall be determined in accordance with Section 1.06; provided that, for purposes only of calculating the Letter of Credit Fee owing hereunder, the daily Stated Amount available to be drawn under any Letter of Credit that provides for one or more automatic increases in the Stated Amount thereof shall be deemed to be the maximum Stated Amount then in effect under such Letter of Credit (at the time of each such calculation of the Letter of Credit Fee), rather than the maximum Stated Amount for which such Letter of Credit may be honored. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each month, 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. If there is any change in the Applicable Margin during any month, the daily amount available to be drawn under of each Letter of Credit shall be computed and multiplied by the Applicable Margin separately for each period during such month that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, while any Event of Default has occurred and is continuing, the Administrative Agent may, and upon the request of the Required Lenders shall, notify the Lead Borrower that all Letter of Credit Fees shall accrue at the Default Rate and thereafter such Letter of Credit Fees shall accrue at the Default Rate to the fullest extent permitted by applicable Laws.

(m) In addition to the Letter of Credit Fees as set forth in Section 2.03(l) above, the Borrowers shall pay immediately upon demand to the Administrative Agent for the account of the L/C

Issuer as non-refundable fees, commissions, and charges (it being acknowledged and agreed that any charging of such fees, commissions, and charges to the Loan Account pursuant to the provisions of Section 2.02(d) shall be deemed to constitute a demand for payment thereof for the purposes of this Section 2.03(m)): (i) a fronting fee which shall be imposed by the L/C Issuer equal to 0.125% per annum times the average amount of the L/C Obligations during the immediately preceding month (or portion thereof), plus (ii) any and all other customary commissions, fees and charges then in effect imposed by, and any and all expenses incurred by, the L/C Issuer, or by any adviser, confirming institution or entity or other nominated person, relating to Letters of Credit, at the time of issuance of any Letter of Credit and upon the occurrence of any other activity with respect to any Letter of Credit (including transfers, assignments of proceeds, amendments, drawings, renewals or cancellations).

(n) Unless otherwise expressly agreed by the L/C Issuer and the Borrowers when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each Standby Letter of Credit, and (ii) the rules of the UCP shall apply to each Commercial Letter of Credit.

(o) The L/C Issuer shall act on behalf of the 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 Administrative 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 "Administrative 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.

(p) The Borrowers shall, upon the request of the Administrative Agent, consign to the Borrowers, the Collateral Agent or the L/C Issuer any bill of lading for Inventory which is supported by an Eligible Letter of Credit issued by the L/C Issuer.

(q) In the event of a direct conflict between the provisions of this Section 2.03 and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.03 shall control and govern.

(r) The provisions of this Section 2.03 shall survive the termination of this Agreement and the repayment in full of the Obligations with respect to any Letters of Credit that remain outstanding.

(s) At the Borrowers' cost and expense, the Borrowers shall execute and deliver to the L/C Issuer such additional certificates, instruments and/or documents and take such additional action as may be reasonably requested by the L/C Issuer to enable the L/C Issuer to issue any Letter of Credit pursuant to this Agreement and related Issuer Document, to protect, exercise and/or enforce the L/C Issuer's rights and interests under this Agreement or to give effect to the terms and provisions of this Agreement or any Issuer Document. Each Borrower irrevocably appoints the L/C Issuer as its attorney-in-fact and authorizes the L/C Issuer, without notice to the Borrowers, to execute and deliver ancillary documents and letters customary in the letter of credit business that may include but are not limited to advisements, indemnities, checks, bills of exchange and issuance documents. The power of attorney granted by the Borrowers is limited solely to such actions related to the issuance, confirmation or amendment of any Letter of Credit and to ancillary documents or letters customary in the letter of credit business. This appointment is coupled with an interest.

(t) The Borrowers, the Agents, the Lenders and the L/C Issuer agree that the Existing Letters of Credit shall be deemed Letters of Credit hereunder as if issued by the L/C Issuer hereunder and, from and after the Restatement Date, shall be subject to and governed by the terms and conditions hereof.

2.04 Swing Line Loans.

(a) The Swing Line.

(i) Subject to the terms and conditions set forth herein, the U.S. Swing Line Lender agrees, in reliance upon the agreements of the other U.S. Lenders set forth in this Section 2.04, to make loans (each such loan, a "U.S. Swing Line Loan") to the U.S. Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the U.S. Swing Line Sublimit, notwithstanding the fact that such U.S. Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of U.S. Committed Loans and U.S. L/C Obligations of the U.S. Lender acting as U.S. Swing Line Lender, may exceed the amount of such U.S. Lender's Commitment; provided, however, that after giving effect to any U.S. Swing Line Loan, (i) the Total U.S. Outstandings shall not exceed the lesser of (A) the U.S. Commitments, or (B) the U.S. Borrowing Base, and (ii) the aggregate Outstanding Amount of the U.S. Committed Loans of any U.S. Lender at such time, plus such U.S. Lender's Applicable Percentage of the Outstanding Amount of all U.S. L/C Obligations at such time, plus such U.S. Lender's Applicable Percentage of the Outstanding Amount of all U.S. Swing Line Loans at such time shall not exceed such U.S. Lender's U.S. Commitment, and provided, further, that the U.S. Borrowers shall not use the proceeds of any U.S. Swing Line Loan to refinance any outstanding Swing Line Loan.

(ii) Subject to the terms and conditions set forth herein, the Canadian Swing Line Lender agrees, in reliance upon the agreements of the other Canadian Lenders set forth in this Section 2.04, to make loans (each such loan, a "Canadian Swing Line Loan") to the Canadian Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Canadian Swing Line Sublimit, notwithstanding the fact that such Canadian Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Canadian Committed Loans and Canadian L/C Obligations of the Canadian Lender acting as Canadian Swing Line Lender, may exceed the amount of such Canadian Lender's Commitment; provided, however, that after giving effect to any Canadian Swing Line Loan, (i) the Total Canadian Outstandings shall not exceed the lesser of (A) the Canadian Commitments, or (B) the Canadian Borrowing Base, and (ii) the aggregate Outstanding Amount of the Canadian Committed Loans of any Canadian Lender at such time, plus such Canadian Lender's Applicable Percentage of the Outstanding Amount of all Canadian L/C Obligations at such time, plus such Canadian Lender's Applicable Percentage of the Outstanding Amount of all Canadian Swing Line Loans at such time shall not exceed such Canadian Lender's U.S. Commitment, and provided, further, that the Canadian Borrowers shall not use the proceeds of any Canadian Swing Line Loan to refinance any outstanding Swing Line Loan.

Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall bear interest only at a rate based on the Base Rate or, if a Canadian Swing Line Loan in Canadian Dollars, the Canadian Base Rate. Immediately upon the making of a Swing Line Loan, each applicable Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Applicable Percentage

times the amount of such Swing Line Loan. The Swing Line Lender shall have all of the benefits and immunities (A) provided to the Agents in Article IX with respect to any acts taken or omissions suffered by the Swing Line Lender in connection with Swing Line Loans made by it or proposed to be made by it as if the term "Administrative Agent" as used in Article IX included the Swing Line Lender with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Swing Line Lender.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Lead Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 3:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent at the request of the Required Lenders prior to 3:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender shall, not later than 4:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the applicable Borrowers at its office by crediting the account of the Lead Borrower on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans.

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

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Committed Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

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

(iv) Each Lender's obligation to make Committed Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(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 Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Committed Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

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

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

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

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

2.05 Prepayments.

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

(b) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 3:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of $100,000 or, as regards Canadian Swing Line Loans in Canadian Dollars, CAD$100,000 . Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason the U.S. Total Outstandings at any time exceed the lesser of the U.S. Commitments or the U.S. Borrowing Base, each as then in effect, the U.S. Borrowers shall immediately prepay U.S. Committed Loans and/or U.S. Swing Line Loans and/or Cash Collateralize the U.S. L/C Obligations in an aggregate amount equal to such excess; provided, however, that the U.S. Borrowers shall not be required to Cash Collateralize the U.S. L/C Obligations pursuant to this Section 2.05(c) unless after the prepayment in full of the U.S. Loans the U.S. Total Outstandings exceed the lesser of the U.S. Commitments or the U.S. Borrowing Base, each as then in effect. If for any reason the Canadian Total Outstandings at any time exceed the lesser of the Canadian Commitments or the Canadian Borrowing Base, each as then in effect, the Canadian Borrowers shall immediately prepay Canadian Committed Loans and/or Canadian Swing Line Loans and/or Cash Collateralize the Canadian L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Canadian Borrowers shall not be required to Cash Collateralize the Canadian L/C Obligations pursuant to this Section 2.05(c) unless after the prepayment in full of the Canadian Loans the Canadian Total Outstandings exceed the lesser of the Canadian Commitments or the Canadian Borrowing Base, each as then in effect.

(d) After the occurrence and during the continuance of a Cash Dominion Event, the Borrowers shall prepay the Loans and Cash Collateralize the L/C Obligations in accordance with the provisions of Section 6.13 hereof. In addition, the Borrowers shall prepay the Loans and Cash Collateralize the L/C Obligations in an amount equal to the Net Proceeds received by a Loan Party on account of a Prepayment Event, irrespective of whether or not a Cash Dominion Event then exists and is continuing. The Agents shall not be obligated to release their Liens on any Collateral until such Net Proceeds have been so received (to the extent required in this clause (d)). The application of such Net Proceeds to the Loans shall not reduce the Commitments. If all Obligations then due are paid, any excess Net Proceeds shall be remitted to the operating account of the Borrowers maintained with the Administrative Agent.

(e) Prepayments made pursuant to this Section 2.05, first, shall be applied to the Swing Line Loans, second, shall be applied ratably to the outstanding Committed Loans, third, shall be used to Cash Collateralize the remaining L/C Obligations; and, fourth, the amount remaining, if any, after the prepayment in full of all Swing Line Loans and Committed Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full may be retained by the Borrowers for use in the ordinary course of their business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party) to reimburse the L/C Issuer or the Lenders, as applicable, and, to the extent not so applied, shall thereafter be returned to the Borrowers.

2.06 Termination or Reduction of Commitments.

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Administrative Agent, terminate the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit or from time to time permanently reduce the Aggregate Commitments, the U.S. Commitments, the Canadian Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 1:00 p.m. (A) thirty (30) days prior to the date of any termination of the Aggregate Commitments and (B) five (5) Business Days prior to the date of any reduction of the Aggregate Commitments, the U.S. Commitments, the Canadian Commitments the Letter of Credit Sublimit or the Swing Line Sublimit, (ii) any such partial reduction shall be in an aggregate amount of $5,000,000 or any whole multiple of $1,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce (A) the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments, (B) the U.S. Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the U.S. Total Outstandings would exceed the U.S. Commitments, (C) the Canadian Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Canadian Total Outstandings would exceed the Canadian Commitments, (D) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, (E) the Canadian Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of Canadian L/C Obligations not fully Cash Collateralized hereunder would exceed the Canadian Letter of Credit Sublimit, (F) the U.S. Swing Line Sublimit if, after giving effect thereto, and to any concurrent payments hereunder, the Outstanding Amount of U.S. Swing Line Loans hereunder would exceed the U.S. Swing Line Sublimit, and (G) the Canadian Swing Line Sublimit if, after giving effect thereto, and to any concurrent payments hereunder, the Outstanding Amount of Canadian Swing Line Loans hereunder would exceed the Canadian Swing Line Sublimit. For the avoidance of doubt, the termination of the U.S. Commitments hereunder shall constitute a termination of the Canadian Commitments without any further action required on the part of any Person.

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

(c) The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit, the U.S. Commitments, the Canadian Commitments, or the Aggregate Commitments under this Section 2.06. Upon any reduction of the Aggregate Commitments, the U.S. Commitments or the Canadian Commitments, the Commitment of each Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. All fees (including, without limitation, Commitment Fees and Letter of Credit Fees) and interest in respect of the Aggregate Commitments, U.S. Commitments, and Canadian Commitments accrued until the effective date of any termination of the Aggregate Commitments, the U.S. Commitments or the Canadian Commitments, shall be paid on the effective date of such termination.

(d) In connection with any reduction in the Aggregate Commitments (or U.S. Commitments) prior to the Maturity Date, if any Loan Party or any of its Subsidiaries owns any Margin Stock, Borrowers shall deliver to the Administrative Agent an updated Form U-1 (with sufficient additional originals thereof for each Lender), duly executed and delivered by the Borrowers, together with such other documentation as the Administrative Agent shall reasonably request, in order to enable the Administrative Agent and the Lenders to comply with any of the requirements under Regulations T, U or X of the FRB.

2.07 Repayment of Loans.

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

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

2.08 Interest.

(a) Subject to the provisions of Section 2.08(b) below, (i) each LIBO Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the LIBO Rate for such Interest Period plus the Applicable Margin; (ii) each BA Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the BA Rate for such Interest Period plus the Applicable Margin (iii) each Base Rate Loan in Dollars 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; (iv) each Canadian Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Canadian Base Rate plus the Applicable Margin; and (v) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to, if in Dollars, the Base Rate and if in Canadian Dollars, the Canadian Base Rate plus the Applicable Margin.

(b) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(c) If any other Event of Default has occurred and is continuing, then the Administrative Agent may, and upon the request of the Required Lenders shall, notify the Lead Borrower that all outstanding Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate and thereafter, until such Event of Default has been duly waived as provided in Section 10.01 hereof, such Obligations shall bear interest at the Default Rate to the fullest extent permitted by applicable Laws.

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

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

(f) For the purpose of complying with the Interest Act (Canada), it is expressly stated that where interest is calculated pursuant hereto at a rate based upon a period of time different from the actual number of days in the year (for the purposes of this Section 2.09(f), the "first rate"), the yearly rate or percentage of interest to which the first rate is equivalent is the first rate multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days in the shorter period, and the Canadian Loan Parties acknowledge that there is a material distinction between the nominal and effective rates of interest and that they are capable of making the calculations necessary to compare such rates and that the calculations herein are to be made using the nominal rate method and not on any basis that gives effect to the principle of deemed reinvestment of interest. Each Canadian Loan Party hereby confirms that it fully understands and is able to calculate the rate of interest applicable to the Loans based on the methodology for calculating per annum rates provided for in this Agreement. Each Canadian Loan Party hereby irrevocably agrees not to plead or assert, whether by way of defense or otherwise, in any proceeding relating to this Agreement or any other Loan Document, that the interest payable under this Agreement and the calculation thereof has not been adequately disclosed to the Canadian Loan Parties as required pursuant to Section 4 of the Interest Act (Canada).

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

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

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

2.10 Computation of Interest and Fees. All computations of interest and fees shall be made on the basis of a 360-day year (or a 365 day year or 366 day year, as the case may be, in the case of Base Rate Loans at a time when the Base Rate is computed by reference to Wells Fargo Bank's prime rate, Canadian Base Rate Loans and BA Rate Loans) 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, bear interest for one day. Each determination by the Administrative 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 Administrative 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 Administrative 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 Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Lender (through the Administrative 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, Type (if applicable), amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

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

2.12 Payments Generally; Administrative 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 Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars or Canadian Dollars, as applicable, and in immediately available funds not later than 2:00 p.m. on the date specified herein. Subject to Section 2.14 hereof, the Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of LIBO Rate Loans or BA Rate Loans (or in the case of any Borrowing of Base Rate Loans, prior to 1:00 p.m. on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with 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) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing

available to the Administrative Agent, then the applicable Lender and the applicable Borrowers severally agree to pay to the Administrative 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 Administrative 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 Administrative Agent in accordance with banking industry rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Administrative 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 Administrative Agent for the same or an overlapping period, the Administrative 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 Borrowing to the Administrative Agent, then the principal amount so paid shall constitute such Lender's Committed Loan included in such Committed Borrowing. 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 Administrative Agent.

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

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

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative 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 Administrative 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 Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest, within seven (7) days after it is determined by the Administrative Agent that the conditions to the applicable Credit Extension set forth in Article IV have not been satisfied.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments hereunder are several and not joint. The failure of any Lender to make any Committed 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 Loan, to purchase its participation or to make its payment hereunder.

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

2.13 Sharing of Payments by Lenders. If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Obligations greater than its pro rata share thereof as provided herein (including as in contravention of the priorities of payment set forth in Section 8.03), then the Credit Party receiving such greater proportion shall (a) notify the Administrative 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:

(a) 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

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

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

2.14 Settlement Among Lenders.

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

(b) The Administrative Agent shall deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Committed Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Administrative Agent shall transfer to each Lender its Applicable Percentage of repayments, and (ii) each Lender shall transfer to the Administrative Agent (as provided below) or the Administrative 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 Loans made by each Lender shall be equal to such Lender's Applicable Percentage of all Committed Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative 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 Administrative Agent. If and to the extent any Lender shall not have so made its transfer to the

Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Administrative Agent in connection with the foregoing.

2.15 Increase in Commitments.

(a) Request for Increase. Provided that no Default or Event of Default then exists or would arise therefrom, upon notice to the Administrative Agent (which shall promptly notify the U.S. Lenders), the Lead Borrower may from time to time, request an increase in the Aggregate Commitments by an amount not exceeding $50,000,000 in the aggregate (each, a "Commitment Increase", and collectively, the "Commitment Increases"); provided that (i) any such request for an increase shall be in a minimum amount of $10,000,000, (ii) the Lead Borrower may make a maximum of 3 such requests, and (iii) the amount of the Aggregate Commitments, as the same may be increased pursuant to any Commitment Increases, shall not exceed $375,000,000 at any time. At the time of sending such notice, the Lead Borrower (in consultation with the Administrative Agent) shall specify the time period within which each U.S. Lender is requested to respond to the Administrative Agent (which shall in no event be less than ten Business Days from the date of delivery of such notice to the U.S. Lenders). Notwithstanding anything to the contrary, no increase in the Aggregate Commitments requested hereunder shall effect an increase in the Canadian Commitments.

(b) Lender Elections to Increase. Each U.S. Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its U.S. Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any U.S. Lender not responding within such time period shall be deemed to have declined to increase its U.S. Commitment.

(c) Notification by Agent; Additional Commitment Lenders. The Administrative Agent shall notify the Borrowers and each U.S. Lender of the U.S. Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Administrative Agent, the L/C Issuer and the Swing Line Lender (which approvals shall not be unreasonably withheld), to the extent that the existing U.S. Lenders decline to increase their U.S. Commitments, or decline to increase their U.S. Commitments to the amount requested by the Lead Borrower, the Administrative Agent, in consultation with the Lead Borrower, will use its reasonable efforts to arrange for other Eligible Assignees to become Lenders (each an "Additional Commitment Lender") hereunder and to issue commitments in an amount equal to the amount of the increase in the Aggregate Commitments requested by the Borrowers and not accepted by the existing U.S. Lenders, provided, however, that without the consent of the Administrative Agent, at no time shall the U.S. Commitment of any Additional Commitment Lender be less than $10,000,000.

(d) Effective Date and Allocations. If the Aggregate Commitments are increased in accordance with this Section, the Administrative Agent, in consultation with the Lead Borrower, shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase. The Administrative Agent shall promptly notify the Lead Borrower and the U.S. Lenders of the final allocation of such increase and the Increase Effective Date and on the Increase Effective Date (i) the Aggregate Commitments under, and for all purposes of, this Agreement shall be increased by the aggregate amount of such Commitment Increases, and (ii) Schedule 2.01 shall be deemed modified, without further action, to reflect the revised U.S. Commitments and Applicable Percentages of the Lenders.

(e) Conditions to Effectiveness of Commitment Increase. As a condition precedent to such Commitment Increase, (i) the Borrowers shall deliver to the Administrative Agent a certificate of each Loan

Party dated as of the Increase Effective Date (in sufficient copies for each U.S. Lender) signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such Commitment Increase, and (B) in the case of the Borrowers, certifying that, before and after giving effect to such Commitment Increase, (1) the representations and warranties contained in Article V and the other Loan Documents are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.15, 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) and (b), respectively, of Section 6.01, and (2) no Default or Event of Default exists or would arise therefrom, (ii) the Borrowers, the Administrative Agent, and any Additional Commitment Lender shall have executed and delivered a Joinder to the Loan Documents in such form as the Administrative Agent shall reasonably require; (iii) the Borrowers shall have paid such fees and other compensation to the Additional Commitment Lenders as the Borrowers and such Additional Commitment Lenders shall agree; (iv) the Borrowers shall have paid such arrangement fees to the Administrative Agent as the Borrowers and the Administrative Agent may agree; (v) the Borrowers and the Additional Commitment Lender shall have delivered such other instruments, documents and agreements as the Administrative Agent may reasonably have requested; (vi) no Default or Event of Default exists; and (vii) if any Loan Party or any of its Subsidiaries owns any Margin Stock, Borrowers shall have delivered to the Administrative Agent an updated Form U-1 (with sufficient additional originals thereof for each Lender), duly executed and delivered by the Borrowers, together with such other documentation as the Administrative Agent shall reasonably request, in order to enable the Administrative Agent and the Lenders to comply with any of the requirements under Regulations T, U or X of the FRB. The Borrowers shall prepay any Committed Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Committed Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this Section.

(f) Adjustments Upon Increase. If Committed Loans shall be outstanding immediately after giving effect to an increase pursuant to Section 2.15(a), upon the Administrative Agent's execution and delivery of written confirmation thereof, each U.S. Lender shall be deemed to have sold and assigned to the applicable U.S. Lender making such increase (each such U.S. Lender, an "Increased Lender"), without recourse, and each applicable Increased Lender shall be deemed to have purchased and assumed from each U.S. Lender the amount of such U.S. Lender's outstanding Committed Loans as shall be necessary to result (after giving effect to the assignments of all Lenders) in the Committed Loans made by each U.S. Lender and by each Increased Lender being equal to its Applicable Percentage multiplied by the aggregate amount of all Committed Loans outstanding as of such date. At the direction of the Administrative Agent, each Increased Lender shall make all payments to the Administrative Agent and the Administrative Agent shall make such payments to the U.S. Lenders as may be necessary to carry the foregoing into effect. The Borrowers hereby agree that any amount that an Increased Lender so pays to another U.S. Lender pursuant to Section 2.15(a) shall be entitled to all rights of a Lender under this Agreement and such payments to the U.S. Lenders shall constitute Committed Loans held by each such Increased Lender under this Agreement and that each such Increased Lender may, to the fullest extent permitted by law, exercise all of its right of payment (including the right of set off) with respect to such amounts as fully as if such Increased Lender had initially advanced to the U.S. Borrowers the amount of such payments. In connection with the assignment and acceptance provided in this Section 2.15(f), the assignment of LIBO Rate Loans shall not be treated as a prepayment of such LIBO Rate Loans for purposes of Section 3.05.

(g) Conflicting Provisions. This Section shall supersede any provisions in Sections 2.13 or 10.01 to the contrary.

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

3.01 Taxes.

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

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

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

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

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Lead Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable Law or reasonably requested by the Lead Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Lead Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Lead Borrower or the Administrative Agent as will enable the Lead Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, in the event that any Borrower is resident for tax purposes in the United States, any Foreign Lender shall deliver to the Lead Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from

time to time thereafter upon the request of the Lead Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

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

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

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

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

(f) FATCA. If a payment made to a Lender under any Loan Document would be subject to U.S. federal income 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 Administrative Agent (or, in the case of a Participant, to the Lender granting the participation only) at the time or times prescribed by law and at such time or times reasonably requested by the Administrative Agent (or, in the case of a Participant, the Lender granting the participation) 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 Administrative Agent (or, in the case of a Participant, the Lender granting the participation) as may be necessary for the Administrative Agent or the Borrowers 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 (f), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

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

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending

Office to make, maintain or fund LIBO Rate Loans or BA Rate Loans, or to determine or charge interest rates based upon the LIBO Rate or BA Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market or to transact bankers' acceptances in the Canadian interbank market, then, on notice thereof by such Lender to the Lead Borrower through the Administrative Agent, any obligation of such Lender to make or continue LIBO Rate Loans or BA Rate Loans or to convert Base Rate Loans to LIBO Rate Loans or BA Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all LIBO Rate Loans or BA Rate Loans, as applicable, of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBO Rate Loans or BA Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBO Rate Loans or BA Rate Loans. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

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

3.04 Increased Costs; Reserves on LIBO Rate Loans.

(a) Increased Costs Generally. If any (i) Change in Law, or (ii) compliance by any Lender or the L/C Issuer with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority (including Regulation D of the FRB):

(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 (including, without limitation, in respect of any Letter of Credit) by, any Lender (except any reserve requirement reflected in the LIBO Rate) or the L/C Issuer;

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

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

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any LIBO Rate Loan or BA Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the applicable Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder.

(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 of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time, the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

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

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

compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on LIBO Rate Loans. The Borrowers shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each LIBO Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Lead Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

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

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

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

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

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

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded (i) each LIBO Rate Loan made by it at the LIBO Rate for such Loan by a matching deposit or other borrowing in the London interbank market and (ii) each BA Rate Loan made by it at the BA Rate for such Loan by a borrowing in the Canadian interbank market, in each case for a comparable amount and for a comparable period, whether or not such LIBO Rate Loan or BA Rate Loan was in fact so funded. Anything to the contrary contained herein notwithstanding, none of any Agent, any Lender or any of their Participants, is required to acquire eurodollar deposits or bankers' acceptances to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBO Rate or BA Rate.

A certificate of the Administrative Agent or a Lender delivered to the Lead Borrower setting forth the amount that the Administrative Agent or such Lender is entitled to receive pursuant to this Section 3.05 shall be conclusive absent manifest error. The Borrowers shall pay such amount to

the Administrative Agent or such Lender, as the case may be, within ten (10) days after receipt thereof.

3.06 Mitigation Obligations; Replacement of Lenders.

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

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

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

3.08 Designation of Lead Borrower as Borrowers' Agent.

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

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes and agrees to discharge all Obligations of each of the other Borrowers. Without limiting the generality of the foregoing, each U.S. Borrower expressly acknowledges and agrees that it is jointly and severally liable for the Canadian Obligations, and each Canadian Borrower expressly acknowledges and agrees that it is jointly and severally liable for the Obligations.

(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 Administrative Agent nor any other Credit Party shall have any obligation to see to the application of such proceeds therefrom.

ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

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

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

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

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

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing (A) the authority of each Loan Party to enter into this Agreement and the other Loan Documents to which such Loan Party is a party or is to be 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 be a party;

(iv) copies of each Loan Party's Organization Documents and such other documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing and in good standing under the Laws of the jurisdiction of its incorporation, organization or formation;

(v) favorable opinions of (A) Greenberg Traurig LLP, counsel to the Loan Parties, (B) Burr & Forman LLP, local Alabama real estate counsel to the Loan Parties, and (C) Borden Ladner Gervais LLP, Canadian counsel to the Loan Parties and Stewart McKelvey, special Nova Scotia counsel to the Loan Parties, each addressed to the Administrative Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(vi) a certificate signed by a Responsible Officer of the Lead Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (C) either that (1) no consents, licenses or approvals (other than those referenced in Section 4.01(a)(iii) of this Agreement) are required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, or (2) that all such consents, licenses and approvals have been obtained and are in full force and effect, and (D) to the Solvency of the Loan Parties on a Consolidated basis as of the Restatement Date after giving effect to the transactions contemplated hereby;

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

(viii) [reserved];

(ix) the Security Documents (including, without limitation, an amendment to the Mortgage), each duly executed by the applicable Loan Parties;

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

(xi) (A) appraisals (based on net liquidation value) by a third party appraiser acceptable to the Administrative Agent of all Inventory of Children's Place Canada, the results of which are satisfactory to the Agent and (B) a written report regarding the results of a commercial finance examination of the Canadian Loan Parties, which shall be satisfactory to the Agent;

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

(xiii) (A) all documents and instruments, including Uniform Commercial Code and PPSA financing statements, required by law or reasonably requested by the Collateral Agent to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents and all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Collateral Agent and (B) the Credit Card Notifications and Blocked Account Agreements required pursuant to Section 6.13 hereof;

(xiv) so-called "date-down" and "mortgage modification" endorsements to the Mortgage Policy; and

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

(b) After giving effect to (i) the first funding under the Loans, (ii) any charges to the Loan Account made in connection with the establishment of the credit facility contemplated hereby and (iii) all Letters of Credit to be issued at, or immediately subsequent to, such establishment, Excess Availability shall be not less than $110,000,000.

(c) The Administrative Agent shall have received a Borrowing Base Certificate dated the Restatement Date, relating to the month ended on May 4, 2019, and executed by a Responsible Officer of the Lead Borrower.

(d) The Administrative Agent shall be reasonably satisfied that any financial statements delivered to it fairly present the business and financial condition of the Loan Parties and that there has been

no Material Adverse Effect since the date of the most recent financial information delivered to the Administrative Agent.

(e) The Administrative Agent shall have received and be satisfied with a detailed forecast for the period commencing on the Restatement Date and ending with the end of the then Fiscal Year.

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

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

(h) All fees required to be paid to the Agents on or before the Restatement Date shall have been paid in full, and all fees required to be paid to the Lenders on or before the Restatement Date shall have been paid in full.

(i) The Borrowers shall have paid all fees, charges and disbursements of counsel to the Administrative Agent to the extent invoiced prior to or on the Restatement Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent).

(j) The Administrative Agent shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Patriot Act and the Canadian AML Legislation.

(k) No material changes in governmental regulations or policies affecting any Loan Party or any Credit Party shall have occurred prior to the Restatement Date.

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

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Fixed Rate Loan Notice requesting only a continuation of LIBO Rate Loans or BA Rate Loans) and each L/C Issuer to issue each Letter of Credit is subject to the following conditions precedent:

(a) The representations and warranties of each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except (i) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects, (ii) 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 (or in all respects, as applicable) as of such earlier date, 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) and (b), respectively, of Section 6.01.

(b) No Default or Event of Default shall have occurred and be continuing, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

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

(d) No injunction, writ, restraining order, or other order of any nature prohibiting, directly or indirectly, the extending of such credit shall have been issued and remain in force by any Governmental Authority against any Borrower, any Agent, any Lender or any of their Affiliates.

(e) The amount of any requested Loan or Letter of Credit shall not exceed and, after giving effect to the requested Loan or other extension of credit hereunder, the U.S. Total Outstandings shall not exceed the lesser of the Revolving Credit Ceiling or the U.S. Borrowing Base at such time.

(f) The amount of any requested Loan or Letter of Credit shall not exceed and, after giving effect to the requested Loan or other extension of credit hereunder, the Canadian Total Outstandings shall not exceed the lesser of the Canadian Revolving Credit Ceiling or the Canadian Borrowing Base at such time.

(g) The amount of any requested Loan or Letter of Credit shall not exceed and, after giving effect to the requested Loan or other extension of credit hereunder, the Total Outstandings shall not exceed the lesser of the Revolving Credit Ceiling or the Aggregate Borrowing Base at such time.

Each Request for Credit Extension (other than a Fixed Rate Loan Notice requesting only a continuation of LIBO Rate Loans or BA Rate Loans) 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 otherwise direct the Administrative Agent to cease making Loans and the L/C Issuer to cease issuing Letters of Credit, the Lenders will fund their Applicable Percentage of all Loans and participate in all Swing Line Loans and Letters of Credit whenever made or issued, which are requested by the Lead Borrower and which, notwithstanding the failure of the Loan Parties to comply with the provisions of this Article IV, are agreed to by the Administrative 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 Administrative Agent and the other Credit Parties that:

5.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary thereof: (a) is a corporation, limited liability company, partnership or limited partnership, duly incorporated,

organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization or formation; (b) 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 as currently conducted or as proposed to be conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party; and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Restatement Date, each Loan Party's name as it appears in official filings in its jurisdiction of incorporation or organization and the name under which each Loan Party conducts its business (if different), its jurisdiction of incorporation or organization, organization type, organization number, if any, issued by its jurisdiction of incorporation, formation or organization, its federal employer identification number, the address of its chief executive office and principal place of business, and, with respect to each Canadian Loan Party, the address of its registered office.

5.02 Authorization; No Contravention. 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 in any material respect 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, (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, or (iii) any governmental licenses, permits, authorizations, consents and approvals; except, in each case referred to in this clause (b), to the extent that any such conflict, breach, termination, contravention or default could not reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favor of the Collateral Agent under the Security Documents); or (d) violate any Law.

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with 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. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency,

reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

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

(b) Each unaudited Consolidated balance sheet of the Lead Borrower and its Subsidiaries delivered pursuant to Section 6.01(b) since the date of the audited Consolidated financial statements most recently delivered pursuant to Section 6.01(a), and the related Consolidated statements of income or operations and cash flows for the applicable fiscal periods ended on the dates reflected in each such unaudited balance sheet, (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Lead Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, 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.

5.06 Litigation. Except as otherwise set forth in Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.07 No Default. No Loan Party or any Subsidiary is in default under or with respect to, or party to, any Material Contract or any Material Indebtedness. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens.

(a) Each of the Loan Parties and each Subsidiary thereof has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, free and clear of all Liens, other than Permitted Encumbrances, except for such defects in title and leasehold interests as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect Each of the Loan Parties and each Subsidiary has good and marketable title to, valid leasehold interests in, or valid licenses to use, all personal property (including Intellectual Property) and assets material to the ordinary conduct of its business as currently conducted or as proposed to be conducted, free and clear of all Liens, other than Permitted Encumbrances, except for such defects in

title, leasehold interests and licenses as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Schedule 5.08(b)(1) sets forth the address (including street address, and, as applicable, county and state or province) of all Real Estate that is owned by the Loan Parties, together with a list of the holders of any mortgage or other Lien thereon as of the Restatement Date. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the real property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Encumbrances, 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, and, as applicable, county and state or province) of all Leases of the Loan Parties, together with a list of the lessor and its contact information with respect to each such Lease as of the Restatement Date. Each of such Leases is in full force and effect as of the Restatement Date and the Loan Parties are not in default of the terms thereof, except for such defaults as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Schedule 7.01 sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party and each of its Subsidiaries, showing as of the date hereof the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens set forth on Schedule 7.01, and Permitted Encumbrances.

(d) Schedule 7.02 sets forth a complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party on the date hereof, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.

(e) Schedule 7.03 sets forth a complete and accurate list of all Indebtedness of each Loan Party or any Subsidiary of a Loan Party as of the Restatement Date, showing as of the Restatement Date the amount, obligor or issuer and maturity thereof. As of the Restatement Date, after giving effect to the transactions contemplated hereby, the Loan Parties have no Indebtedness except for the Indebtedness set forth on Schedule 7.03 and Permitted Indebtedness.

5.09 Environmental Compliance.

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

(b) Except as otherwise set forth in Schedule 5.09, to the knowledge of the Loan Parties, none of the properties currently or formerly owned or operated by any Loan Party or any Subsidiary thereof is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state, provincial, municipal or local list or is adjacent to any such property; 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 on any property currently owned or operated by any Loan Party or any Subsidiary thereof or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or Subsidiary thereof; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Subsidiary thereof; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party or any Subsidiary thereof.

(c) Except as otherwise set forth on Schedule 5.09, no Loan Party or any Subsidiary thereof is undertaking, and no Loan Party or any Subsidiary thereof 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 or any Subsidiary thereof have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any Subsidiary thereof.

5.10 Insurance. The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Restatement 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. The Loan Parties and their Subsidiaries have (a) filed (i) all United States and Canadian federal income tax returns required to be filed, and (ii) all other material United States and Canadian federal, state, provincial and other tax returns and reports required to be filed, and (b) have paid all such federal, state, provincial and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP, as to which Taxes no Lien has been filed and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect. No Loan Party or any Subsidiary thereof is a party to any tax sharing agreement.

5.12 ERISA, Canadian Pension Plan Compliance.

(a) The Lead Borrower, each of its ERISA Affiliates, and each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Lead Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. The Loan Parties and each ERISA Affiliate have made all required contributions to each Plan subject to Sections 412 or 430 of the Code and to each Multiemployer Plan, and no application for a funding waiver or an extension of any amortization period pursuant to Sections 412 or 430 of the Code has been made with respect to any Plan. No Lien imposed under the Code or ERISA exists or, to the knowledge of the Lead Borrower, is likely to arise on account of any Plan or Multiemployer Plan.

(b) There are no pending or, to the best knowledge of the Lead Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could

reasonably be expected to have a Material Adverse Effect. To the best knowledge of the Lead Borrower, 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 could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate, (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

(d) All Canadian Pension Plans are duly registered under the Income Tax Act (Canada), applicable pension standards legislation and any other applicable Laws which require registration and no event has occurred which could reasonably be expected to cause the loss of such registered status. Each Loan Party has complied with the Income Tax Act (Canada) and all applicable Laws regarding each Canadian Pension Plan, except in each case where the failure to do so could not reasonably be expected to result in any Lien (except for contribution amounts not yet due and payable) or a Material Adverse Effect. No Loan Party has sponsored, maintained, contributed to or otherwise incurred liability under a Canadian Defined Benefit Plan. All employee and employer payments, contributions or premiums required to be withheld, made, remitted or paid to or in respect of each Canadian Pension Plan and all other amounts that are due to the pension fund of any Canadian Pension Plan from any Loan Party have been withheld, made, remitted or paid on a timely basis in accordance with the terms of such plans, any applicable collective bargaining agreement or employment contract and all applicable Laws in all material respects. Any assessments owed to the Pension Benefits Guarantee Fund (or similar governmental authorities of other jurisdictions) established under the Pension Benefits Act (Ontario) (or similar pension standards legislations of other jurisdictions) in respect of any Canadian Pension Plan have been paid when due, except where the failure to do so has not had or would not reasonably be expected to result in a Material Adverse Effect. No Canadian Loan Party nor any of its Subsidiaries has any liability for any Canadian Pension Plan which has been terminated or discontinued, except where the failure to do so has not had or would not reasonably be expected to result in a Material Adverse Effect.

5.13 Subsidiaries; Equity Interests.

(a) The Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of each such Subsidiary, listed by class, and setting forth the number and percentage of the outstanding Equity Interests of each such class owned directly or indirectly by the applicable Loan Party. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Part (a) of Schedule 5.13, free and clear of all Liens except for those created under the Security Documents. No Loan Party or any of its respective Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of any Loan Party's Subsidiaries' Equity Interests or any security convertible into or exchangeable for any such Equity Interests. The Loan Parties have no equity investments in any other corporation, partnership or entity other than those specifically disclosed in Part (b) of Schedule 5.13. Part (c) of Schedule 5.13 is a complete and accurate description of the authorized Equity Interests of each Loan Party, by class, and a description of the number of shares or other Equity Interests of each such class that are issued and outstanding. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable and, other than with respect to the Lead Borrower, are owned in the amounts specified on Part

(c) of Schedule 5.13, free and clear of all Liens except for those created under the Security Documents. Except as set forth in Schedule 5.13, there are no subscriptions, options, warrants, or calls relating to any shares of any Loan Party's Equity Interests, including any right of conversion or exchange under any outstanding security or other instrument. No Loan Party is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Equity Interests or any security convertible into or exchangeable for any of its Equity Interests. 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.

(b) As of the date hereof, (i) TCP Canada Inc. does not own any assets, other than (x) books, records, rights and other assets associated with its existence, and (y) other immaterial assets not used in connection with any of the Loan Parties' business operations, and (ii) TCP Investment Canada I Corp. does not own any assets, other than (w) the limited partnership Equity Interests in Children's Place Canada, (x) books, records, rights and other assets associated with its existence, operation as a holding company and ownership of the Equity Interests described in the foregoing clause (w), (y) cash solely in amounts sufficient to pay taxes attributable to the earnings of the partnership, and (z) other immaterial assets not used in connection with any of the Loan Parties' business operations.

5.14 Margin Regulations; Investment Company Act.

(a) Neither any Loan Party nor any of its Subsidiaries owns any Margin Stock or is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock. 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 extending credit to others for the purpose of purchasing or carrying any Margin Stock, or for any purpose that violates the provisions of Regulation T, U or X of the FRB. Neither any Loan Party nor any of its Subsidiaries expects to acquire any Margin Stock.

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

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

5.16 Compliance with Laws. Each of the Loan Parties and each Subsidiary is in compliance (A) in all material respects with the requirements of all applicable Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in

good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and (B) with Sections 10.17 and 10.22.

5.17 Intellectual Property; Licenses, Etc. Each Loan Party owns, or holds licenses in, all Intellectual Property, trade names, patent rights and other authorizations that are necessary to the conduct of its business as currently conducted and as proposed to be conducted, and attached hereto as Schedule 5.17 is a true, correct, and complete listing of all material patents, patent applications, industrial designs, industrial design applications, trademarks, trademark applications, copyrights, and copyright registrations as to which a Loan Party is the owner or is an exclusive licensee. To the best knowledge of the Lead Borrower after reasonable inquiry, (i) there is no action, proceeding, claim or complaint pending or, threatened in writing to be brought against any Loan Party which might jeopardize any of such Person's interest in any of the foregoing licenses, patents, copyrights, trademarks, trade names, designs or applications, except those which are not, in the aggregate, material to the Loan Parties' financial condition, results of operations or business and (ii) no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any Subsidiary infringes upon any rights held by any other Person.

5.18 Labor Matters. There are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Except as set forth on Part (a) of Schedule 5.18, 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, provincial, local or foreign Law dealing with such matters, except for any noncompliance which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Except as set forth on Part (b) of Schedule 5.18, no Loan Party or any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar Law. All material payments due from any Loan Party and its Subsidiaries, 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 as set forth on Part (c) of Schedule 5.18, no Loan Party or any Subsidiary is a party to or bound by (i) any collective bargaining agreement or (ii) any management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement which, in each case in this clause (ii), imposes commitments on such Loan Party or its Subsidiary in excess of $3,000,000 (or, with respect to a Canadian Loan Party or any Subsidiary thereof, $500,000) per year. There are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board or any other Governmental Authority or arbitrator, and no labor organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on,

arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound. Each Loan Party and its Subsidiaries are in material compliance with all requirements pursuant to employment standards, labor relations, health and safety, workers compensation and human rights laws, immigration laws and other applicable employment legislation. To the knowledge of the Loan Parties, no officer or director of any Loan Party who is party to an employment agreement with such Loan Party is in violation of any term of any employment contract or proprietary information agreement with such Loan Party; and to the knowledge of the Loan Parties, the execution of the employment agreements and the continued employment by the Loan Parties of the such persons, will not result in any such violation.

5.19 Security Documents.

(a) The Security Documents are effective to create in favor of the Collateral Agent a legal, valid and enforceable security interest in the Collateral, and the Security Documents constitute, or will upon the filing of financing statements and/or the obtaining of "control", in each case with respect to the relevant Collateral as required under the applicable UCC or PPSA, as applicable, the creation of a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties thereunder in such Collateral, in each case prior and superior in right to any other Person, except for Permitted Encumbrances having priority under applicable Law.

(b) The Mortgage creates in favor of the Collateral Agent, for the benefit of the Credit Parties, a legal, valid, continuing and enforceable Lien in the Mortgaged Property (as defined in the Mortgage), 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. The Mortgage has been recorded with the appropriate Governmental Authorities and the Collateral Agent has a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all Mortgaged Property that may be perfected by such filing (including without limitation the proceeds of such Mortgaged Property), in each case prior and superior in right to any other Person, but subject to Permitted Encumbrances having priority by operation of applicable Law.

5.20 Solvency. After giving effect to the transactions contemplated by this Agreement, and before and after giving effect to each Credit Extension, the Loan Parties, on a Consolidated basis, are Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party.

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 Restatement Date, which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository, and (iv) the identification of each Blocked Account Bank.

(b) Annexed hereto as Schedule 5.21(b) is a list describing all arrangements as of the Restatement 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 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. Each Loan Party hereby jointly and severally indemnifies each Credit Party against, and agrees that such Person will hold each such Credit Party harmless from, any claim, demand or liability, including reasonable attorneys' fees, for any broker's, finder's or placement fee or commission incurred by such indemnifying party or the Lead Borrower or its Affiliates or a representative of such Person.

5.23 Customer and Trade Relations. Except for matters which, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, 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. No Loan Party is in default under any Material Contract to which such Person is a party or by which such Person is bound, the effect of which default is to cause, or to permit the other party(ies) to such Material Contract to cause, with the giving of notice if required, such Material Contract to be terminated. Set forth on Schedule 5.24 is a description of all Material Contracts of the Loan Parties, showing the parties and principal subject matter thereof and amendments and modifications thereto; provided, however, that the Lead Borrower may amend Schedule 5.24 to add additional Material Contracts so long as such amendment occurs by written notice to the Administrative Agent not less than five (5) days after the date on which such Loan Party enters into such Material Contract after the Restatement Date. Except for matters which, either individually or in the aggregate, could not reasonably be expected to either result in a Material Adverse Effect or expose the Loan Parties to liabilities greater than $20,000,000 (or, with respect to a Canadian Loan Party, $2,000,000), each Material Contract (other than those that have expired at the end of their normal terms) (a) is in full force and effect and is binding upon and enforceable against the applicable Loan Party or its Subsidiaries and, to the best of the Lead Borrower's knowledge, each other Person that is a party thereto in accordance with its terms, (b) is not in default due to the action or inaction of any Loan Party or its Subsidiaries and (c) the consummation of the financing arrangements contemplated hereunder, will not constitute or create a default or create a right of termination under any Material Contract.

5.25 Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.26 OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws. No Loan Party nor any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any loan made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any applicable Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws by any Person (including any Credit Party or other individual or entity participating in any transaction.

5.27 Patriot Act, Etc. To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001, as amended) (the "Patriot Act"), and (c) the Canadian AML Legislation. The Beneficial Ownership Certification for the Borrowers most recently provided to the Agents and the Lenders hereunder is true, correct and complete in all respects.

5.28 Swap Contracts. On each date that any Swap Contract is executed by any Provider, each Loan Party satisfies all eligibility, suitability and other requirements under the Commodity Exchange Act and the Commodity Futures Trading Commission regulations.

ARTICLE VI.
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, 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 Administrative Agent, in form and detail satisfactory to the Administrative Agent:

(a) as soon as available, but in any event within ninety (90) days after the end of each Fiscal Year of the Lead Borrower (commencing with the Fiscal Year ending February 1, 2020), a Consolidated and consolidating balance sheet of the Lead Borrower and its Subsidiaries as at the end of such Fiscal Year,

the related Consolidated and consolidating statements of income or operations and Shareholders' Equity and the related Consolidated statement of cash flows for such Fiscal Year, setting forth in each case, but only with respect to the Consolidated statements, in comparative form the figures for (i) the previous Fiscal Year and (ii) such period set forth in the projections delivered pursuant to Section 6.01(c) hereof, all in reasonable detail and prepared in accordance with GAAP, such Consolidated and (where relevant) consolidating statements to be audited and accompanied by (i) a report and unqualified opinion of Ernst & Young LLP or another public accounting firm of nationally recognized standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit, (ii) an opinion of such public accounting firm independently assessing the Loan Parties' internal controls over financial reporting in accordance with Item 308 of SEC Regulation S-K, PCAOB Auditing Standard No. 2, and Section 404 of Sarbanes-Oxley expressing a conclusion that contains no statement that there is a material weakness in such internal controls, except for such material weaknesses as to which the Required Lenders do not object and (iii) as to statements not covered by an audit, certification by a Responsible Officer of the Lead Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the Consolidated and consolidating financial statements of the Lead Borrower and its Subsidiaries;

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) Fiscal Quarters of each Fiscal Year of the Lead Borrower, and within sixty (60) days after the end of the last Fiscal Quarter of each Fiscal Year of the Lead Borrower (or after the occurrence of an Increased Financial Reporting Event, within thirty (30) days after the end of each Fiscal Month of each Fiscal Year (except with respect to the last Fiscal Month of each Fiscal Quarter, with respect to which the applicable period for delivery shall be forty-five (45) days rather than thirty (30) days), a Consolidated and consolidating balance sheet of the Lead Borrower and its Subsidiaries as at the end of such Fiscal Quarter (or Fiscal Month, as applicable), the related Consolidated and consolidating statements of income or operations and Shareholders' Equity and the related Consolidated statement of cash flows for such Fiscal Quarter (or Fiscal Month, as applicable), and for the portion of the Fiscal Year then ended, setting forth in each case, but only with respect to the Consolidated statements, in comparative form the figures for (i) such period set forth in the projections delivered pursuant to Section 6.01(c) hereof, (ii) the corresponding Fiscal Quarter (or Fiscal Month, as applicable) of the previous Fiscal Year and (iii) the corresponding portion of the previous Fiscal Year, all in reasonable detail, such Consolidated and (where relevant) consolidating statements to be certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations and cash flows of the Lead Borrower and its Subsidiaries as of the end of such Fiscal Quarter and for the period then ended (or as of the end of such Fiscal Month and for the period then ended, as applicable) in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) as soon as available, but in any event (i) on or before January 31st of each Fiscal Year of the Lead Borrower, a preliminary month-by-month business plan for the following Fiscal Year prepared by management of the Lead Borrower and reviewed by the board of directors of the Lead Borrower, and (ii) on or before March 1st of each Fiscal Year of the Lead Borrower, a final month-by-month business plan for such Fiscal Year prepared by management of the Lead Borrower (which final business plan shall be approved by the board of directors of the Lead Borrower by March 31st of such Fiscal Year), in each case the form of which shall be substantially similar to the business plan for the Fiscal Year ended on or about January 31, 2009 and the substance of which shall be reasonably satisfactory to the Administrative Agent, for such Fiscal Year; provided that, if the Lead Borrower delivers a business plan that is not reasonably satisfactory to the Administrative Agent, but that otherwise complies with this Section 6.01(c), this Section 6.01(c) shall be deemed to be satisfied to the extent that the Lead Borrower delivers a business plan reasonably satisfactory to the Administrative Agent on or before March 31 of such Fiscal Year.

6.02 Certificates; Other Information. Deliver to the Administrative Agent, in form and detail satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of its public accounting firm certifying such financial statements;

(b) (i) concurrently with the delivery of the financial statements referred to in Section 6.01, a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower, which shall include (A) a certification as to the amount, if any, of rent under any Leases, and any obligations and liabilities with respect to Taxes, that have not been timely paid, and (B) a certification as to the receipt of notice, if any, as to any obligations or liabilities with respect to utilities and/or insurance premiums that have not been timely paid. 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;

(ii) concurrently with the delivery of the financial statements referred to in Section 6.01(b), with regard to Eligible Franchise Receivables, copies of all stand-by letters of credit supporting each such Account not previously provided to the Administrative Agent;

(c) on the second Friday of each Fiscal Month (or, if such day is not a Business Day, on the next succeeding Business Day):

(i) a certificate in the form of Exhibit G (a "Borrowing Base Certificate") showing the Borrowing Base as of the close of business as of the last day of the immediately preceding Fiscal Month, each Borrowing Base Certificate to be certified as complete and correct by a Responsible Officer of the Lead Borrower; provided that (i) if Uncapped Excess Availability at any time is less than 12.5% of the Revolving Credit Ceiling or (ii) an Event of Default has occurred and is continuing, such Borrowing Base Certificate shall be delivered on Friday of each week (or, if Friday is not a Business Day, on the next succeeding Business Day), and shall show the Borrowing Base as of the close of business on the immediately preceding Saturday; and

(ii) a schedule of all Eligible Franchise Receivables and Eligible Trade Receivables indicating the aging of each such Account as well as copies of all past due invoices related to Eligible Franchise Receivables issued by the Borrowers to the applicable franchisees not previously provided to the Administrative Agent;

(d) upon the request of the Administrative Agent or its auditors, appraisers, accountants, consultants or other representatives, copies of each of the Lead Borrower's federal income tax returns, and any amendments thereto;

(e) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by its public accounting firm in connection with the accounts or books of the Loan Parties or any Subsidiary, or any audit of any of them, in each case to the extent permitted by the policies of its public accounting firm at such time;

(f) promptly after the same are available, copies of each annual report, proxy or financial statement, or other document, report or communication sent to the stockholders of the Loan Parties, and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party files with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or with any national or foreign securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(g) the financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule;

(h) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or any Subsidiary thereof pursuant to the terms of any indenture, loan or credit or similar agreement which indicate a breach or default of any such document, in each case not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(i) as soon as available, but in any event within 30 days after the end of each Fiscal Year of the Loan Parties (or upon the request of the Administrative Agent or its auditors, appraisers, accountants, consultants or other representatives), (i) a certificate executed by an authorized officer of the Lead Borrower certifying the existence and adequacy of the property and casualty insurance program carried by the Loan Parties and their Subsidiaries, and (ii) a written summary of said program identifying the name of each insurer, the number of each policy and expiration date of each policy, the amounts and types of each coverage, and a list of exclusions and deductibles for each policy;

(j) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from any Governmental Authority (including, without limitation, the SEC (or comparable agency in any applicable non-U.S. jurisdiction)) concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any Subsidiary thereof or any other matter which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;

(k) promptly after the Administrative Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness;

(l) promptly after any Agent's or any Lender's request therefor, (i) such information as requested pursuant to Section 10.17 hereof, (ii) confirmation of the accuracy of the information set forth in the most recent Beneficial Ownership Certification for the Borrowers provided to the Agents and the Lenders, and (ii) a new Beneficial Ownership Certification for the Borrowers (which the Borrowers shall provide when the individual(s) to be identified as a Beneficial Owner have changed, regardless of whether any Agent or any Lender has made a request therefor); and

(m) 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 Administrative Agent or any Lender may from time to time reasonably request.

Financial statements required to be delivered pursuant to Sections 6.01(a), 6.01(b) or 6.02(f) (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 EDGAR or another Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Lead Borrower shall deliver paper copies of such documents to the Administrative 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 Administrative Agent or such Lender and (ii) the Lead

Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance, the Lead Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(b) to the Administrative Agent. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Loan Parties hereby acknowledge that the Administrative Agent may make available materials or information provided by or on behalf of the Loan Parties hereunder (collectively, "Borrower Materials") to the Lenders and the L/C Issuer by posting the Borrower Materials on IntraLinks, SyndTrack or another similar secure electronic transmission system (the "Platform"). Each Loan Party further agrees that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties shall be deemed to have authorized the Administrative Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). The Administrative Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

6.03 Notices. Promptly notify the Administrative 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, including (i) breach or non-performance of, any default under, or termination of, a Material Contract or with respect to Material Indebtedness of any Loan Party or any Subsidiary thereof; (ii) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or any administrative or arbitration proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws;

(c) of any undischarged or unpaid judgments or decrees in excess of $3,000,000, individually or in the aggregate;

(d) of the occurrence of any ERISA Event or Canadian Pension Event;

(e) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;

(f) of any change in any Loan Party's senior executive officers;

(g) of the discharge by any Loan Party of its present public accounting firm or any withdrawal or resignation by such public accounting firm;

(h) of any collective bargaining agreement or other labor contract to which a Loan Party becomes a party, the application for the certification of a collective bargaining agent, or any labor negotiations or strikes;

(i) of the filing of any Lien for unpaid Taxes against any Loan Party;

(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, expropriation or similar proceeding or if any material portion of the Collateral is damaged or destroyed; and

(k) of any failure by any Loan Party to pay rent or such other amounts due at (i) any distribution centers or warehouses; (ii) ten percent (10%) or more of such Loan Party's locations; or (iii) any of such Loan Party's locations if such failure continues for more than ten (10) days following the day on which such rent first came due and such failure would be reasonably likely to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth details of the occurrence referred to therein and stating what action the Lead Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Pay and discharge in full as the same shall become due and payable, 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 for labor, materials and supplies and claims of landlords, warehousemen, customs brokers, freight forwarders, consolidators and carriers) which, if unpaid, would by law become a Lien upon its property (other than a Permitted Encumbrance), and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, except, in each case, where (a) the validity or amount thereof (other than payroll taxes or taxes that are the subject of a United States federal or Canadian federal or provincial tax Lien) is being contested in good faith by appropriate proceedings diligently conducted, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, and (d) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. The Lead Borrower will, upon request, furnish the Collateral Agent with proof satisfactory to the Collateral Agent indicating that the Loan Parties and their Subsidiaries have made the payments or deposits described in clause (a) above. Each Loan Party shall, and shall cause each of its Subsidiaries to, pay in conformity with its customary practice all accounts payable incident to the operations of such Person not referred to

in this Section 6.04, above. Nothing contained herein shall be deemed to limit the rights of the Agents with respect to determining Reserves pursuant to this Agreement.

6.05 Preservation of Existence, Etc. 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.

6.06 Maintenance of Properties.

(a) Keep its properties in such repair, working order and condition, and shall from time to time make such repairs, replacements, additions and improvements thereto, as are reasonably necessary for the efficient operation of its business and shall comply at all times in all material respects with all material franchises, licenses and leases to which it is party so as to prevent any loss or forfeiture thereof or thereunder, except where (i) compliance is at the time being contested in good faith by appropriate proceedings and (ii) failure to comply with the provisions being contested has not resulted, and which, in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) Take all reasonable actions to possess and maintain all Intellectual Property material to the conduct of their respective businesses and own all right, title and interest in and to, or have a valid license for, all such Intellectual Property. No Loan Party nor any of its Subsidiaries shall take any action, or fail to take any action, that could reasonably be expected to (i) result in the invalidity, abandonment, misuse, lapse, or unenforceability of Intellectual Property which is material to the conduct of the business of the Loan Parties or (ii) knowingly infringe upon or misappropriate any rights of other Persons.

(c) Do all things reasonably necessary in order to comply with all Environmental Laws at any Real Property or otherwise in connection with their operations noncompliance with which could reasonably be expected to cause a Material Adverse Effect, and obtain all permits and other governmental authorizations for their operations under applicable Environmental Laws other than such permits and other authorizations the failure of which to obtain could not, individually or in the aggregate, reasonably be expected to cause a Material Adverse Effect.

6.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies reasonably acceptable to the Administrative 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 applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Administrative Agent.

(b) 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 property) and lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Collateral 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 Collateral 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 Collateral Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(c) Cause commercial general liability policies to be endorsed to name the Collateral Agent as an additional insured.

(d) Cause business interruption policies to name the Collateral Agent as a loss payee and to be endorsed or amended to include (i) a provision that, from and after the Restatement Date, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Collateral Agent, (ii) a provision to the effect that none of the Loan Parties, the Administrative Agent, the Collateral Agent or any other party shall be a co-insurer and (iii) such other provisions as the Collateral Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(e) Cause such policy referred to in this Section 6.07(b) 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 Collateral Agent (giving the Collateral 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 Collateral Agent.

(f) Deliver to the Collateral 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 Collateral Agent, including an insurance binder) together with evidence satisfactory to the Collateral Agent of payment of the premium therefor.

(g) If at any time the area in which any Eligible Real Estate is located is designated (i) a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such 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) a "Zone 1" area, obtain earthquake insurance in such total amount as is reasonable and customary for similarly situated companies.

(h) 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 Administrative Agent furnish the Administrative Agent certificates evidencing renewal of each such policy.

(i) Permit any representatives that are designated by the Collateral 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. The Loan Parties shall pay the reasonable fees and expenses of any representatives retained by the Collateral Agent to conduct any such inspection.

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 (a) 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 (i) 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; (ii) such contest effectively suspends enforcement of the contested Laws, and (iii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect, and (b) with Sections 10.17 and 10.22.

6.09 Books and Records; Accountants.

(a) (i) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Subsidiary, as the case may be.

(b) At all times retain Ernst & Young LLP or another public accounting firm which is reasonably satisfactory to the Administrative Agent and instruct such public accounting firm in writing to cooperate with, and be available to, the Administrative Agent or its representatives to discuss the Loan Parties' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such public accounting firm, as may be raised by the Administrative Agent; provided that the Lead Borrower shall be entitled to participate in any such meetings or discussions. The Lead Borrower hereby irrevocably authorizes and directs all auditors, accountants, or other third parties to deliver to the Administrative Agent, at the Borrowers' expense, copies of the Borrowers' financial statements, papers related thereto, and other accounting records of any nature in their possession, and to disclose to the Administrative Agent any information they may have regarding the Collateral or the financial condition of the Borrowers, in each case to the extent permitted by the policies of such auditors, accountants or other third parties at such time; provided that the Lead Borrower shall be entitled to be provided with copies of any such financial statements, papers, accounting records or disclosures contemporaneously therewith.

6.10 Inspection Rights.

(a) Permit representatives and independent contractors of the Administrative 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 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 an Event of Default has occurred and is continuing, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and without advance notice.

(b) Upon the request of the Administrative Agent after reasonable prior notice, permit the Administrative Agent or professionals (including investment bankers, consultants, accountants, lawyers and appraisers) retained by the Administrative Agent to conduct appraisals, commercial finance examinations and other evaluations, including, without limitation, of (i) the Lead Borrower's practices in the computation of the Borrowing Base and (ii) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves. Subject to the following sentences, the Loan Parties shall pay the fees and expenses of the Administrative Agent or such

professionals with respect to such evaluations and appraisals as provided below. Without limiting the foregoing, the Loan Parties acknowledge that the Administrative Agent may, in its discretion, in the event that any Loans are outstanding hereunder, undertake one (1) real estate appraisal and one (1) inventory appraisal and one (1) commercial finance examination each Fiscal Year at the Loan Parties' expense; provided that, in the event that Excess Availability is at any time less than 30% of the Loan Cap, the Administrative Agent may, in its discretion, undertake an additional inventory appraisal (that is, up to two (2) inventory appraisals in total) and an additional commercial finance examination (that is, up to two (2) commercial finance examinations in total) each Fiscal Year at the Loan Parties' expense. Notwithstanding anything to the contrary contained herein, the Administrative Agent may cause additional inventory appraisals and commercial finance examinations to be undertaken (i) as it in its reasonable discretion deems necessary or appropriate, at its own expense, or (ii) if a Default or Event of Default shall have occurred and be continuing or if required by applicable Law, at the expense of the Loan Parties. For the avoidance of doubt, the inventory appraisal and the commercial finance examination described in Section 4.01(a)(xi) shall not be included in the determination of whether appraisals or commercial finance examinations may be undertaken pursuant to this Section 6.10(b).

(c) Permit the Administrative Agent, from time to time, to engage a geohydrologist, an independent engineer or other qualified consultant or expert, reasonably acceptable to the Administrative Agent, at the expense of the Loan Parties, to undertake Phase I environmental site assessments during the term of this Agreement of the Eligible Real Estate, provided such assessments may only be undertaken (i) during the continuance of a Default or Event of Default, (ii) if a Loan Party receives any notice or obtains knowledge of (A) any potential or known release of any Hazardous Materials at or from any Eligible Real Estate, notification of which must be given to any Governmental Authority under any Environmental Law, or notification of which has, in fact, been given to any Governmental Authority, or (B) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental health or safety matter affecting any Loan Party or any Eligible Real Estate from any Person (including, without limitation, the Environmental Protection Agency); provided further that one such assessment may be undertaken from and after the Restatement Date at the Loan Parties' expense without the requirement that any such event shall have occurred. Environmental assessments may include detailed visual inspections of the Real Estate, including, without limitation, any and all storage areas, storage tanks, drains, dry wells and leaching areas, 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 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 Administrative Agent and such third parties to enable such assessment and evaluation to be timely completed in a manner reasonably satisfactory to the Administrative Agent.

6.11 Use of Proceeds. Use the proceeds of the Credit Extensions (a) to finance transaction fees and expenses related hereto, (b) to finance the acquisition of working capital assets of the Borrowers, including the purchase of Inventory and Equipment, in each case in the ordinary course of business, (c) to finance Capital Expenditures of the Borrowers, (d) to make Restricted Payments in accordance with this Agreement, (e) to finance Permitted Investments in accordance with this Agreement, and (f) for general corporate purposes of the Loan Parties, in each case to the extent expressly permitted under applicable Law and the Loan Documents.

6.12 Additional Loan Parties.

(a) Notify the Administrative Agent at the time that any Person becomes a Subsidiary, and promptly thereafter (and in any event within fifteen (15) days), cause any such Person to (i) become a Loan Party by executing and delivering to the Administrative Agent a Joinder to this Agreement or a counterpart of the Facility Guaranty or such other document as the Administrative Agent shall deem appropriate for such purpose, (ii) grant a Lien to the Collateral Agent on such Person's assets to secure the Obligations to

the extent required under the Security Documents, and (iii) deliver to the Administrative Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (x)). In no event shall compliance with this Section 6.12 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.12 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower or permit the inclusion of any acquired assets in the computation of the Borrowing Base.

(b) Prior to the acquisition by TCP Canada Inc. or TCP Investment Canada I Corp. of any assets (other than the assets described in Section 5.13(b) hereof or other assets not of the same type that constitutes Collateral (which other assets are not used in connection with any of the Loan Parties' business operations)), cause such Person to (A) become a Loan Party by executing and delivering to the Agents a Joinder Agreement or a counterpart of the Facility Guaranty or such other document as the Administrative Agent shall deem appropriate for such purpose, (B) grant a Lien to the Collateral Agent on such Person's assets to the extent required by the Security Documents, and (C) deliver to the Agents documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (i), subject to customary assumptions and qualifications), all of the foregoing to be in form, content and scope reasonably satisfactory to the Administrative Agent.

6.13 Cash Management.

(a) On or prior to the Restatement Date (to the extent not previously delivered pursuant to the Existing Credit Agreement):

(i) deliver to the Administrative Agent copies of notifications (each, a "Credit Card Notification") substantially in the form attached hereto as Exhibit H which have been executed on behalf of such Loan Party and delivered to such Loan Party's credit card clearinghouses and processors listed on Schedule 5.21(b); and

(ii) enter into a blocked account agreement (each, a "Blocked Account Agreement") satisfactory in form and substance to the Agents with each Blocked Account Bank (collectively, the "Blocked Accounts").

The Administrative Agent hereby acknowledges and agrees that, upon delivery of the Credit Card Notifications and Blocked Account Agreements described on Schedule 6.13, the requirements of this Section 6.13(a), and the requirements set forth below in each of Sections 6.13(b) and 6.13(c), shall be deemed to have been satisfied.

(b) (i) Each Credit Card Notification shall require the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to a Blocked Account of all payments due from Credit Card Issuers and Credit Card Processors, and (ii) the Borrowers shall cause each depository institution listed on Schedule 5.21(a) to cause the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to a Blocked Account of all amounts on deposit in each DDA.

(c) Each Blocked Account Agreement shall require, after the occurrence and during the continuance of a Cash Dominion Event, the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to each concentration account maintained by the Collateral Agent at Wells Fargo Bank or its Affiliates (each, a "Concentration Account"), of all cash receipts and collections, including, without limitation, the following:

(i) all available cash receipts from the sale of Inventory and other assets (whether or not constituting Collateral);

(ii) all proceeds of collections of Accounts;

(iii) all Net Proceeds, and all other cash payments received by a Loan Party from any Person or from any source or on account of any Disposition or other transaction or event, including, without limitation, any Prepayment Event;

(iv) the then contents of each DDA (net of any minimum balance, not to exceed $2,500.00, as may be required to be kept in the subject DDA by the depository institution at which such DDA is maintained);

(v) the then entire ledger balance of each Blocked Account (net of any minimum balance, not to exceed $2,500.00, as may be required to be kept in the subject Blocked Account by the Blocked Account Bank); and

(vi) the proceeds of all credit card charges.

Prior to the exercise of remedies provided for in Section 8.02 (or before the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), all amounts received in a Concentration Account from any source, including the Blocked Account Banks, shall be applied by the Administrative Agent in the order set forth in Section 2.05(e).

(d) The Loan Parties shall provide the Collateral Agent (i) with written notice of any Restricted Payment or other intercompany transfer to be made to any Loan Party by any Subsidiary located outside of the United States or Canada, in each case as otherwise permitted pursuant to Sections 7.06 or 7.18, respectively, of this Agreement, no less than five (5) days prior to the receipt thereof and (ii) with written confirmation (which shall include a fed reference number, if applicable) on the date of the receipt of any such Restricted Payment or other intercompany transfer.

(e) Each Concentration Account shall at all times be under the sole dominion and control of the Collateral Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from a Concentration Account, (ii) the funds on deposit in a Concentration Account shall at all times be collateral security for all of the Obligations and (iii) the funds on deposit in a Concentration Account shall be applied as provided in this Agreement.

(f) In the event that, after the occurrence and during the continuance of a Cash Dominion Event, any Loan Party receives or otherwise has dominion and control of any proceeds or collections described in Section 6.13(c), such proceeds and collections shall be held in trust by such Loan Party for the Collateral Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into a Concentration Account or dealt with in such other fashion as such Loan Party may be instructed by the Collateral Agent.

(g) Upon the request of the Administrative Agent, the Loan Parties shall cause bank statements and/or other reports to be delivered to the Administrative Agent not less often than monthly, accurately setting forth all amounts deposited in each Blocked Account to ensure the proper transfer of funds as set forth above.

6.14 Information Regarding the Collateral.

(a) Furnish to the Administrative Agent at least thirty (30) 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, any location, office or facility at which Collateral owned by it is located (including the establishment of any such new location, office or facility), or, in the case of a Canadian Loan Party, its registered office; (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 jurisdiction of organization. The Loan Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC, the PPSA or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral (subject only to Permitted Encumbrances having priority by operation of applicable Law) for its own benefit and the benefit of the other Credit Parties.

(b) From time to time as may be reasonably requested by the Administrative Agent, the Lead Borrower shall supplement each Schedule hereto, or any representation herein or in any other Loan Document, with respect to any matter arising after the Restatement Date that, if existing or occurring on the Restatement Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein). Notwithstanding the foregoing, no supplement or revision to any Schedule or representation shall be deemed the Credit Parties' consent to the matters reflected in such updated Schedules or revised representations nor permit the Loan Parties to undertake any actions otherwise prohibited hereunder or fail to undertake any action required hereunder from the restrictions and requirements in existence prior to the delivery of such updated Schedules or such revision of a representation; nor shall any such supplement or revision to any Schedule or representation be deemed the Credit Parties' waiver of any Default resulting from the matters disclosed therein.

6.15 Physical Inventories.

(a) Cause not less than one (1) physical inventory to be undertaken, at the expense of the Loan Parties, in each twelve month period, conducted by such inventory takers as are satisfactory to the Collateral Agent and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be satisfactory to the Collateral Agent. The Collateral Agent, at the expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. Upon the request of the Collateral Agent, the Lead Borrower shall provide the Collateral Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory undertaken by a Loan Party) and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.

(b) The Collateral Agent, in its discretion, if any Default shall have occurred and be continuing, may cause additional such inventories to be taken as the Collateral Agent determines (each, at the expense of the Loan Parties).

6.16 Environmental Laws. (a) Conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all environmental permits appropriate or necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are necessary to maintain the value and marketability of the Real Estate or to otherwise comply with

Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP.

6.17 Further Assurances.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any applicable Law, or which any 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 Agents, from time to time upon request, evidence satisfactory to the Agents as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets are acquired by any Loan Party after the Restatement Date (other than assets constituting Collateral under the Security Documents that become subject to the Lien of the Security Documents upon acquisition thereof), notify the Agents thereof, and the Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or shall be requested by any Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section 6.17, all at the expense of the Loan Parties. In no event shall compliance with this Section 6.17(b) waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.17(b) if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute Consent to the inclusion of any acquired assets in the computation of the Borrowing Base.

(c) Upon the request of the Collateral Agent, cause each of its customs brokers, freight forwarders, consolidators and other carriers which, individually, have control over, and/or hold the documents evidencing ownership of, Inventory or other Collateral of the Loan Parties with an aggregate retail value in excess of ten percent (10%) of the retail value of all Inventory or other Collateral of the Loan Parties at such time to deliver a Customs Broker Agreement to the Collateral Agent.

(d) Upon the request of the Collateral Agent, cause any of its landlords with respect to Real Estate acquired or leased after the Restatement Date to deliver a Collateral Access Agreement to the Collateral Agent in such form as the Collateral Agent may reasonably require if the aggregate retail value of the Inventory or other Collateral of the Loan Parties at any such location exceeds five percent (5%) of the retail value of all Inventory or other Collateral of the Loan Parties at such time.

(e) Notwithstanding the foregoing, the Collateral Agent shall not enter into any Mortgage in respect of any improved Real Estate acquired by any Loan Party after the Restatement Date (whether or not Eligible Real Estate) unless the Collateral Agent has provided to the Lenders (i) if such Mortgage relates to an improved Real Estate not located in a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), a completed Flood Certificate with respect to such improved Real Estate from a third-party vendor at least ten (10) Business Days prior to entering into such Mortgage, or (ii) if such Mortgage relates to an improved real property located in such a “flood hazard area”, the following documents with respect to such improved Real Estate at least thirty (30) days prior to entering into such Mortgage: (1) a completed Flood Certificate from a third party vendor; (2)

(A) a notification to the Lead Borrower that such real property is located in such a "flood hazard area" and (if applicable) notification to the Lead Borrower that flood insurance coverage is not available and (B) evidence of the receipt by the Lead Borrower of such notice; and (3) if required by applicable Laws (including, without limitation, the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended and in effect), evidence of required flood insurance; provided that the Collateral Agent may enter into any such Mortgage prior to the notice period specified above if the Collateral Agent shall have received confirmation from each applicable Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction.

6.18 Compliance with Terms of Leaseholds. Except as otherwise expressly permitted hereunder (including, without limitation, in connection with Store closings permitted pursuant to clause (b) of the definition of Permitted Dispositions), make all payments and otherwise perform all obligations in respect of all Leases of real property to which any Loan Party or any of its Subsidiaries is a party, keep such Leases in full force and effect and not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled, notify the Administrative Agent of any default by any party with respect to such Leases and cooperate with the Administrative Agent in all respects to cure any such default, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. In the event that the Borrowers become delinquent in their rent payments, the Administrative Agent may establish Reserves against the Borrowing Base for the amount of any landlord liens arising from such delinquency.

6.19 Material Contracts. Perform and observe all of the terms and provisions of each Material Contract to be performed or observed by any Loan Party or any of its Subsidiaries, take all such action required on the part of any Loan Party or any of its Subsidiaries to maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time requested by the Administrative Agent and, upon request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.20 ERISA.

(a) Comply in all material respects with the applicable provisions of ERISA or any other applicable federal, state, provincial, local or foreign law dealing with such matters, except where the failure to comply could reasonably be expected to result in a claim or liability against any Loan Party or its Affiliates of $3,000,000 or more.

(b) Pay and discharge promptly any liability imposed upon it pursuant to the provisions of Title IV of ERISA; provided, however, that neither any Loan Party nor any ERISA Affiliate or any other Subsidiary of the Loan Parties shall be required to pay any such liability if (i) the amount, applicability or validity thereof shall be diligently contested in good faith by appropriate proceedings, and (ii) such Person shall have set aside on its books reserves, in the opinion of the independent certified public accountants of such Person, adequate with respect thereto.

(c) Deliver to the Collateral Agent, promptly, and in any event within 20 days, after (i) the occurrence of any Reportable Event in respect of a Plan, a copy of the materials that are filed with the PBGC, (ii) any Loan Party or any ERISA Affiliate or an administrator of any Plan files with participants, beneficiaries or the PBGC a notice of intent to terminate any such Plan, a copy of any such notice, (iii) the receipt of notice by any Loan Party or any ERISA Affiliate or an administrator of any Plan from the PBGC of the PBGC's intention to terminate any Plan or to appoint a trustee to administer any such Plan, a copy of such notice, (iv) the request by any Lender of copies of each annual report that is filed on Treasury Form 5500 with respect to any Plan, together with certified financial statements (if any) for the Plan and any actuarial statements on Schedule B to such Form 5500, (v) any Loan Party or any ERISA Affiliate knows or has reason to know of any event or condition which could reasonably be expected to constitute grounds under the provisions of Section 4042 of ERISA for the termination of (or the appointment of a trustee to administer) any Plan, an explanation of such event or condition, (vi) the receipt by any Loan Party or any ERISA Affiliate of an assessment of withdrawal liability under Section 4201 of ERISA from a Multiemployer Plan, a copy of such assessment, (vii) any Loan Party or any ERISA Affiliate knows or has reason to know of any event or condition which would reasonably be expected to cause any one of them to incur a liability under Section 4062, 4063, 4064 or 4069 of ERISA or Section 412(n) or 4971 of the Code, an explanation of such event or condition, or (viii) any Loan Party or any ERISA Affiliate knows or has reason to know that an application is to be, or has been, made to the Secretary of the Treasury for a waiver of the minimum funding standard under the provisions of Section 412 of the Code, a copy of such application, and in each case described in clauses (i) through (iii) and (v) through (vii) together with a statement signed by an officer setting forth details as to such Reportable Event, notice, event or condition and the action which such Loan Party and any ERISA Affiliate proposes to take with respect thereto.

(d) No Loan Party will sponsor, maintain, contribute to or otherwise incur liability under a Canadian Defined Benefit Plan.

6.21 OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws. Each Loan Party will, and will cause each of its Subsidiaries to comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties shall and shall cause their respective Subsidiaries to comply with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

ARTICLE VII.
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, 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, the PPSA 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. Have outstanding, make, acquire or hold any Investment (or become contractually committed to do so), directly or indirectly, or incur any liabilities (including contingent obligations) for or in connection with any Investment, except Permitted Investments.

7.03 Indebtedness; Disqualified Stock. (a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness; (b) issue Disqualified Stock, or (c) issue and sell any other Equity Interests unless (i) such Equity Interests shall be issued solely by the Lead Borrower and not by a Subsidiary of a Loan Party, (ii) such Equity Interests provide that all dividends and other Restricted Payments) in respect thereof shall be made solely in additional shares of such Equity Interests, in lieu of cash, (iii) such Equity Interests shall not be subject to redemption other than redemption at the option of the Loan Party issuing such Equity Interests and in accordance with the limitations contained in this Agreement, and (iv) all Restricted Payments in respect of such Equity Interests are expressly subordinated to the Obligations.

7.04 Fundamental Changes.

(a) Merge, amalgamate, dissolve, liquidate, wind up, consolidate with or into another Person, reorganize, enter into a proposal, plan of reorganization, arrangement, recapitalization or reclassify its Equity Interests (or agree to do any of the foregoing); or

(b) suspend or go out of a substantial portion of its or their business or any material line of business, except that, so long as no Default shall have occurred and be continuing prior to or immediately after giving effect thereto or would result therefrom, any Subsidiary may merge, consolidate or amalgamate with (i) a Loan Party, provided that the Loan Party shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided further that when any wholly-owned Subsidiary is merging with another Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except Permitted Dispositions.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, so long as no Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) each Subsidiary of a Loan Party may make Restricted Payments to any Loan Party (which may include intermediate Restricted Payments by a Subsidiary of a Loan Party to a Subsidiary that is not a Loan Party so long as, reasonably contemporaneously therewith, such Restricted Payments are further remitted to a Loan Party);

(b) the Loan Parties and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) the Lead Borrower may repurchase its capital stock in any transaction or series of related transactions which are part of a common plan completed on or at any time within ninety (90) days after the commencement thereof (each, a "Stock Repurchase Transaction") so long as the Payment Conditions are satisfied;

(d) the Loan Parties may issue and sell Equity Interests provided that (i) (A) with respect to any Equity Interests, all dividends in respect of which are to be paid (and all other payments in respect of which are to be made) shall be in additional shares of such Equity Interests, in lieu of cash, (B) such Equity Interests shall not be subject to redemption other than redemption at the option of the Loan Party issuing such Equity Interests, and (C) all payments in respect of such Equity Interests are expressly subordinated to the Obligations, and (ii) no Loan Party shall issue any additional Equity Interests in a Subsidiary; and

(e) the Loan Parties may make other Restricted Payments if, on a pro forma basis after giving effect thereto, the Payment Conditions are satisfied.

7.07 Payments and Prepayments of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness, or make any payment in violation of any subordination terms of any Subordinated Indebtedness, except (i) as long as no Event of Default shall have occurred and be continuing or would arise therefrom, regularly scheduled or mandatory repayments or redemptions of Permitted Indebtedness, (ii) refinancings and refundings of such Indebtedness permitted pursuant to Section 7.03, and (iii) as long as the Payment Conditions are satisfied, other repayments or prepayments of Permitted Indebtedness in an aggregate amount not to exceed $10,000,000.00 in any Fiscal Year.

7.08 Change in Nature of Business. Engage in any line of business substantially different from the business (or any business substantially related or incidental thereto) conducted by the Loan Parties and their Subsidiaries on the Restatement Date.

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, except for: (a) transactions that are on fair and reasonable terms, that are fully disclosed to the Administrative Agent, and that are no less favorable to the Loan Parties than would be obtainable by the Loan Parties at the time in a comparable arm's length transaction with a Person other than an Affiliate; (b) transactions between the Lead Borrower and Services Company in the ordinary course of business; (c) intercompany loans and advances or other intercompany Indebtedness permitted pursuant to clauses (b), (c), (e), (i) and (j) of the definition of Permitted Indebtedness; and (d) intercompany Investments permitted pursuant to clauses (g), (h), (i) and (m) of the definition of Permitted Investments.

7.10 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement, any other Loan Document or the New Headquarters Lease Guaranty) 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 Collateral Agent; provided, however, that this

clause (iv) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 7.01 solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.11 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or extending credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the FRB; (b) to make any payments to a Sanctioned Entity or a Sanctioned Person, to finance any investments in a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person; (c) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws; or (d) for purposes other than those permitted under this Agreement.

7.12 Amendment of Material Documents. Amend, modify or waive any of a Loan Party's rights under (a) its Organization Documents or (b) any Material Contract or Material Indebtedness (other than on account of any refinancing thereof otherwise permitted hereunder), in each case to the extent that such amendment, modification or waiver would result in a Default or Event of Default under any of the Loan Documents or otherwise would be reasonably likely to have a Material Adverse Effect.

7.13 Corporate Name; Fiscal Year.

(a) Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as required by GAAP.

(b) Change its name as it appears in official filings in the jurisdiction of its incorporation, formation or other organization (b) change its chief executive office, registered office, principal place of business, corporate offices or warehouses or locations at which any material portion of the Collateral is held or stored, or the location of its records concerning the Collateral, (c) change the type of entity that it is, (d) change its organization identification number, if any, issued by its jurisdiction of incorporation, formation or other organization, or (e) change its jurisdiction of incorporation, formation or organization, in each case without at least thirty (30) days' prior written notice to the Collateral Agent and after the Collateral Agent's written acknowledgment, which acknowledgment shall not be unreasonably withheld or delayed, that any reasonable action requested by the Collateral Agent in connection therewith, including to continue the perfection of any Liens in favor of the Collateral Agent, on any Collateral, has been completed or taken, and provided that any such new location of any U.S. Loan Party or Domestic Subsidiary shall be in the continental United States and any such new location of any Canadian Loan Party or Canadian Subsidiary shall be in Canada.

7.14 Blocked Accounts; Credit Card Processors.

(a) Open new Blocked Accounts unless the Loan Parties shall have delivered to the Collateral Agent appropriate Blocked Account Agreements consistent with the provisions of Section 6.13 and otherwise satisfactory to the Collateral Agent.

(b) Enter into new agreements with Credit Card Processors or Credit Card Issuers other than the ones expressly contemplated herein or in Section 6.13 hereof unless the Loan Parties shall have delivered to the Collateral Agent true and complete copies of such agreements and appropriate Credit Card Notifications consistent with the provisions of Section 6.13 and otherwise satisfactory to the Collateral Agent.

7.15 Consignments. Consign any Inventory or sell any Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale.

7.16 Antilayering. The Loan Parties will not, and will not permit any of their Subsidiaries to, incur or in any fashion become or remain liable with respect to any Indebtedness of the Loan Parties or any Subsidiary which, by its terms, is subordinated to any other Indebtedness of such Loan Party or such Subsidiary and which is not expressly subordinated to the Obligations on terms satisfactory to the Administrative Agent.

7.17 Consolidated Fixed Charge Coverage Ratio. During the continuance of a Covenant Compliance Event, permit the Consolidated Fixed Charge Coverage Ratio, calculated as of the last day of each month, to be less than 1.00:1.00.

7.18 Foreign Transfers. Permit the Loan Parties located within the United States and Canada to make intercompany transfers outside the ordinary course of business to their Affiliates outside the United States or Canada unless Payment Conditions are satisfied.

ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrowers or any other Loan Party fails to pay when and as required to be paid herein, (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, or (iii) any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants.

(i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03, 6.05, 6.07, 6.10, 6.11, 6.12, 6.13 or 6.14 or Article VII of this Agreement or in Section 5.01 of the Security Agreement, or in Section 5.01 of the Canadian Security Agreement; or

(ii) Any Loan Party fails to perform or observe any term, covenant or agreement contained in Section 6.02(c) of this Agreement and such failure continues for five (5) days; or

(iii) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 6.01, 6.02(a) or 6.02(b) of this Agreement and such failure continues for fifteen (15) days; 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 thirty (30) days; or

(d) Material Impairment. Any material impairment of the prospect of repayment of any portion of the Obligations owing to the Credit Parties or a material impairment of the value or priority of the Credit Parties' security interests in the Collateral; or

(e) Representations and Warranties in the Credit Agreement. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith (including, without limitation, any Borrowing Base Certificate), or in completing any request for a Borrowing via the Portal, shall be incorrect or misleading in any material respect when made or deemed made (or, with respect to any representation, warranty, certification, or statement of fact qualified by materiality, incorrect or misleading in any respect); or

(f) Material Indebtedness; Swap Contracts. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness (other than Indebtedness hereunder and Indebtedness under Swap Contracts) or Guarantee having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $3,000,000, or (B) fails to observe or perform any other agreement or condition relating to any Material Indebtedness (other than Indebtedness hereunder and Indebtedness under Swap Contracts) or Guarantee having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $3,000,000, 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 Indebtedness or the beneficiary or beneficiaries of such Guarantee (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 (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Loan Party or such Subsidiary as a result thereof is greater than $3,000,000; or

(g) Insolvency Proceedings, Etc. Any Loan Party or any of its Subsidiaries institutes or consents to the institution of or declares its intention to institute any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, interim receiver, monitor, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, interim receiver, monitor, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed and the appointment continues undischarged, undismissed or unstayed for 45 calendar days (provided, however, that, during the pendency of such period, the Credit Parties shall be relieved of their

obligation to extend credit hereunder), or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material portion of its property is instituted without the consent of such Person and continues undismissed or unstayed for 45 calendar days (provided, however, that, during the pendency of such period, the Credit Parties shall be relieved of their obligation to extend credit hereunder), or an order for relief is entered in any such proceeding; or

(h) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material portion of the property of any such Person; or

(i) Judgments. (i) There is entered against any Loan Party or any Subsidiary thereof one or more judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding $3,000,000 (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) which become Liens or encumbrances upon any material portion of any Borrower's properties or assets, and all such judgments or orders shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof, or (ii) an action or proceeding is brought against any Borrower which is reasonably likely to be decided adversely to such Borrower, and such adverse decision would materially impair the prospect of repayment of the Obligations or materially impair the value or priority of the Credit Parties' security interests in the Collateral; or

(j) Liens. A notice of Lien, levy, or assessment is filed of record with respect to any of any Loan Party's properties or assets by the United States Government, the Government of Canada, or any department, agency, or instrumentality thereof, or by any state, province, county, municipal, or governmental agency, or any taxes or debts owing at any time hereafter to any one or more of such entities becomes a Lien, whether choate or otherwise, upon any of any Loan Party's properties or assets and the same is not paid on the payment date thereof; or

(k) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of $3,000,000 or which would reasonably likely result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of $100,000 or which would reasonably likely result in a Material Adverse Effect; or

(l) Invalidity of Loan Documents. (i) Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document; or (ii) any Lien purported to be created under any Security Document shall cease to be (except as permitted pursuant to the terms hereof or thereof), or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document; or

(m) Change of Control. There occurs any Change of Control; or

(n) Cessation of Business. Except as otherwise expressly permitted hereunder, any Loan Party shall take any action 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

(o) Loss of Collateral. There occurs any uninsured loss to any material portion of the Collateral; or

(p) Indictment. The indictment or institution of any legal process or proceeding against, any Loan Party or any Subsidiary thereof, under any federal, state, provincial, municipal, and other criminal statute, rule, regulation, order, or other requirement having the force of law for a felony; or

(q) Guaranty. The termination or attempted termination of any Facility Guaranty (other than as expressly permitted hereunder); or

(r) Breach of Contractual Obligation. Any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Contract or fails to observe or perform any other agreement or condition relating to any such Material Contract or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such Material Contract to terminate such Material Contract; provided that any event contemplated by this subsection (r) shall only constitute an Event of Default if the counterparty to such Material Contract has commenced enforcement action (including, without limitation, to terminate such Material Contract) against such Loan Party or Subsidiary for such failure or breach under such Material Contract; or

(s) 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 (ii) any Borrower or any other Loan Party shall, directly or indirectly, (A) make any payment on account of any Subordinated Indebtedness that has been contractually subordinated in right of payment to the payment of the Obligations, except to the extent that such payment is permitted by the terms of the Subordination Provisions applicable to such Subordinated Indebtedness or (B) disavow or contest in any manner (x) the effectiveness, validity or enforceability of any of the Subordination Provisions, (y) that the Subordination Provisions exist for the benefit of the Credit Parties, or (z) 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.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be

immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(c) require that the Loan Parties Cash Collateralize the L/C Obligations; and

(d) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, may (and at the direction of the Required Lenders, shall) proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or applicable Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or 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;

provided, however, upon the occurrence of any Event of Default with respect to any Loan Party or any Subsidiary thereof under Section 8.01(g), the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Loan Parties to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

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.

Each of the Lenders agrees that it shall not, unless specifically requested to do so in writing by the Administrative Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Loan Party or to foreclose any Lien on, or otherwise enforce any security interest in, or other rights to, any of the Collateral.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting fees, indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and the Collateral Agent and amounts payable under Article III) payable to the Administrative Agent and the Collateral Agent, each in its capacity as such;

Second, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts

payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the Lenders, to payment to the Lenders of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances, ratably among the Lenders in proportion to the amounts described in this clause Third payable to them;

Fourth, to the extent that Swing Line Loans have not been refinanced by a Committed Loan, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the Swing Line Loans;

Fifth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Committed Loans and other Obligations, and fees (including Letter of Credit Fees), ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fifth payable to them;

Sixth, to the extent that Swing Line Loans have not been refinanced by a Committed Loan, to payment to the Swing Line Lender of that portion of the Obligations constituting unpaid principal of the Swing Line Loans;

Seventh, to payment of that portion of the Obligations constituting unpaid principal of the Committed Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to the Administrative 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 to the extent secured under the Security Documents, 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 to the extent secured under the Security Documents, 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 Law.

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 or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE IX.
ADMINISTRATIVE AND COLLATERAL AGENT

9.01 Appointment and Authority.

(a) Each of the Lenders (in its capacities as a Lender), Swing Line Lender and the L/C Issuer hereby irrevocably appoints Wells Fargo Bank to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions.

(b) Each of the Lenders (in its capacities as a Lender), Swing Line Lender and the L/C Issuer hereby irrevocably appoints Wells Fargo Bank as Collateral Agent and authorizes the Collateral 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 Collateral Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Collateral Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(b)), 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.

(c) In addition, and without limiting any of the foregoing, in its capacity as Collateral Agent, for the purposes of holding any hypothec granted pursuant to the laws of the Province of Quebec, each of the Credit Parties hereby irrevocably appoints and authorizes the Collateral Agent and, to the extent necessary, ratifies the appointment and authorization of the Collateral Agent, to act as the hypothecary representative of the applicable Credit Parties as contemplated under Article 2692 of the Civil Code of Quebec, and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Collateral Agent under any related deed of hypothec. The Collateral Agent shall have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Collateral Agent pursuant to any such deed of hypothec and applicable Law. Any person who becomes a Credit Party shall, by its execution of an Assignment and Assumption, be deemed to have consented to and confirmed the Collateral Agent as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Credit Party, all actions taken by the Collateral Agent in such capacity. The substitution of the Collateral Agent pursuant to the provisions of this Article IX also constitute the substitution of the Collateral Agent as hypothecary representative as aforesaid.

9.02 Rights as a Lender. The Persons serving as the Agents hereunder shall have the same rights and powers in their capacity as a Lender as any other Lender and may exercise the same as though they were not the Administrative Agent or the Collateral Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent or the Collateral Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act

as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent or the Collateral Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Agents shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agents:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent or the Collateral Agent, as applicable, is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that no Agent shall be required to take any action that, in its respective opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, the Collateral Agent or any of its Affiliates in any capacity.

No Agent shall be liable for any action taken or not taken by it (i) with the Consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction. The Agents shall not be deemed to have knowledge of any Default unless and until notice describing such Default is given to such Agent by the Loan Parties, a Lender or the L/C Issuer. Upon the occurrence of a Default or Event of Default, the Agents shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders. Unless and until the Agents shall have received such direction, any 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 Agents be required to comply with any such directions to the extent that any Agent believes that its compliance with such directions would be unlawful.

The Agents shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (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 Agents.

9.04 Reliance by Agents. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received written notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. Each Agent may consult with legal counsel (who may be counsel for any Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. Each 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 such Agent. Each 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 Agents 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 such Agent.

9.06 Resignation of Agents. Either Agent may at any time give written 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 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent or Collateral Agent, as applicable, meeting the qualifications set forth above; provided that if the Administrative Agent or the Collateral Agent shall notify the Lead Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Collateral Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security

until such time as a successor Collateral Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent or Collateral Agent, as applicable, hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Lead Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Administrative Agent or Collateral Agent hereunder.

Any resignation by Wells Fargo Bank as Administrative Agent pursuant to this Section shall also constitute the resignation of Wells Fargo Bank as Swing Line Lender and Wells Fargo Bank as L/C Issuer. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Agents or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Agents or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 9.11, the Agents 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 Agents.

9.08 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and

irrespective of whether the Administrative Agent shall have made any demand on the 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 Administrative 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 Administrative Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer the Administrative Agent and such Credit Parties under Sections 2.03(l), 2.03(m), 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 Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer or to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

9.09 Collateral and Guaranty Matters. The Credit Parties irrevocably authorize the Agents, at their option and in their discretion,

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted) and the expiration, termination or Cash Collateralization of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 10.01;

(b) to subordinate any Lien on any property granted to or held by the Collateral 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 any Agent at any time, the Required Lenders will confirm in writing such 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 9.09. In

each case as specified in this Section 9.09, the Agents 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 9.09.

9.10 Notice of Transfer. The Agents may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in Section 10.06.

9.11 Reports and Financial Statements. By signing this Agreement, each Lender:

(a) agrees to furnish the Administrative Agent on the first day of each month (and, after the occurrence and during the continuance of a Cash Dominion Event, at such frequency as the Administrative 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 Administrative Agent shall be entitled to assume that no amounts are due to any Lender on account of Other Liabilities unless the Administrative Agent has received written notice thereof from such Lender;

(b) is deemed to have requested that the Administrative Agent furnish such Lender, promptly after they become available, copies of all financial statements and Borrowing Base Certificates required to be delivered by the Lead Borrower hereunder and all commercial finance examinations and appraisals of the Collateral received by the Agents (collectively, the "Reports");

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

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

(e) agrees to keep all Reports confidential in accordance with the provisions of Section 10.07 hereof; and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agents 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 Agents and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Agents and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

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

9.13 Indemnification of Agents. Without limiting the obligations of the Loan Parties hereunder, the Lenders hereby agree to indemnify the Agents, 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 any Agent, the L/C Issuer and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by any Agent, the L/C Issuer and their Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's, the L/C Issuer's and their Related Parties' gross negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction.

9.14 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 Agents) authorized to act for, any other Lender.

9.15 Defaulting Lenders. Notwithstanding the provisions of Section 2.14 hereof, the Administrative Agent shall not be obligated to transfer to a Defaulting Lender any payments made by the Borrowers to the Administrative Agent for the Defaulting Lender's benefit or any proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, the Administrative Agent shall transfer any such payments (i) first, to the Swing Line Lender to the extent of any Swing Line Loans that were made by the Swing Line Lender and that were required to be, but were not, paid by the Defaulting Lender, (ii) second, to the L/C Issuer, to the extent of the portion of a Letter of Credit Disbursement that was required to be, but was not, paid by the Defaulting Lender, (iii) third, to each Non-Defaulting Lender ratably in accordance with its Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of a Loan (or other funding obligation) was funded by such Non-Defaulting Lender), (iv) to the Cash Collateral Account, the proceeds of which shall be retained by the Administrative Agent and may be made available to be re-advanced to or for the benefit of the Borrowers (upon the request of the Lead Borrower and subject to the conditions set forth in Section 4.02) as if such Defaulting Lender had made its portion of the Loans (or other funding obligations) hereunder, and (v) from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender. Subject to the foregoing, the Administrative Agent may hold and, in its discretion, re-lend to the Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by

the Administrative Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Applicable Percentages in connection therewith) and for the purpose of calculating the fee payable under Section 2.09(a), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero; provided, that the foregoing shall not apply to any of the matters governed by Section 10.01(a) through (c). The provisions of this Section 9.15 shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the Non-Defaulting Lenders, the Administrative Agent, the L/C Issuer, and the Borrowers shall have waived, in writing, the application of this Section 9.15 to such Defaulting Lender, or (z) the date on which such Defaulting Lender pays to the Administrative Agent all amounts owing by such Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by the Administrative Agent, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by the Administrative Agent pursuant to Section 9.15(b) shall be released to the Borrowers). The operation of this Section 9.15 shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to the Administrative Agent, the L/C Issuer, the Swing Line Lender, or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle the Borrowers, at their option, upon written notice to the Administrative Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to the Administrative Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Assumption in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being paid its share of the outstanding Obligations (other than any Other Liabilities, but including (1) all interest, fees (except any Commitment Fees or Letter of Credit Fees not due to such Defaulting Lender in accordance with the terms of this Agreement), and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Applicable Percentage of its participation in the Letters of Credit); provided, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Credit Parties' or the Loan Parties' rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 9.15 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 9.15 shall control and govern.

(a) If any Swing Line Loan or Letter of Credit is outstanding at the time that a Lender becomes a Defaulting Lender then:

(i) such Defaulting Lender's participation interest in any Swing Line Loan or Letter of Credit shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent (x) the Outstanding Amount sum of all Non-Defaulting Lenders' Credit Extensions after giving effect to such reallocation does not exceed the total of all Non-Defaulting Lenders' Commitments and (y) the conditions set forth in Section 4.02 are satisfied at such time;

(ii) if the reallocation described in clause (b)(i) above cannot, or can only partially, be effected, the Borrowers shall within one Business Day following notice by the Administrative Agent (x) first, prepay such Defaulting Lender's participation in any outstanding Swing Line Loans (after giving effect to any partial reallocation pursuant to clause (b)(i) above) and (y) second, cash collateralize such Defaulting Lender's participation in Letters of Credit (after giving effect to any partial reallocation pursuant to clause (b)(i) above), pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Administrative Agent, for so long as such L/C Obligations are outstanding; provided, that the Borrowers shall not be obligated to cash collateralize any Defaulting Lender's participations in Letters of Credit if such Defaulting Lender is also the L/C Issuer;

(iii) if the Borrowers cash collateralize any portion of such Defaulting Lender's participation in Letters of Credit Exposure pursuant to this Section 9.15(b), the Borrowers shall not be required to pay any Letter of Credit Fees to the Administrative Agent for the account of such Defaulting Lender pursuant to Section 2.03 with respect to such cash collateralized portion of such Defaulting Lender's participation in Letters of Credit during the period such participation is cash collateralized;

(iv) to the extent the participation by any Non-Defaulting Lender in the Letters of Credit is reallocated pursuant to this Section 9.15(b), then the Letter of Credit Fees payable to the Non-Defaulting Lenders pursuant to Section 2.03 shall be adjusted in accordance with such reallocation;

(v) to the extent any Defaulting Lender's participation in Letters of Credit is neither cash collateralized nor reallocated pursuant to this Section 9.15(b), then, without prejudice to any rights or remedies of the L/C Issuer or any Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Lender under Section 2.03 with respect to such portion of such participation shall instead be payable to the L/C Issuer until such portion of such Defaulting Lender's participation is cash collateralized or reallocated;

(vi) so long as any Lender is a Defaulting Lender, the Swing Line Lender shall not be required to make any Swing Line Loan and the L/C Issuer shall not be required to issue, amend, or increase any Letter of Credit, in each case, to the extent (x) the Defaulting Lender's Applicable Percentage of such Swing Line Loans or Letter of Credit cannot be reallocated pursuant to this Section 9.15(b) or (y) the Swing Line Lender or the L/C Issuer, as applicable, has not otherwise entered into arrangements reasonably satisfactory to the Swing Line Lender or the L/C Issuer, as applicable, and the Borrowers to eliminate the Swing Line Lender's or L/C Issuer's risk with respect to the Defaulting Lender's participation in Swing Line Loans or Letters of Credit; and

(vii) The Administrative Agent may release any cash collateral provided by the Borrowers pursuant to this Section 9.15(b) to the L/C Issuer and the L/C Issuer may apply any such cash collateral (i) to the payment of such Defaulting Lender's Applicable Percentage of any Letter of Credit Disbursement that is not reimbursed by the Borrowers pursuant to Section 2.03 or (ii) to the funding of such Defaulting Lender's Applicable Percentage of any Committed Loan

deemed made pursuant to Section 2.03(d), as applicable. Subject to Section 10.24, 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.

9.16 Providers. Each provider of Bank Products or Cash Management Services (each, a "Provider") in its capacity as such shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom the Agents are acting. Each Agent hereby agrees to act as agent for such Providers and, by virtue of entering into an agreement in respect of Bank Products or Cash Management Services (each, a "Specified Agreement"), the applicable Provider automatically shall be deemed to have appointed each Agent as its agent and to have accepted the benefits of the Loan Documents. It is understood and agreed that the rights and benefits of each Provider under the Loan Documents consist exclusively of such Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to the Collateral Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Provider, by virtue of entering into a Specified Agreement, automatically shall be deemed to have agreed that the Administrative Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release Bank Products Reserves and reserves in respect of Cash Management Services and that if reserves are established there is no obligation on the part of the Agent to determine or insure whether the amount of any such reserve is appropriate or not. The Administrative Agent shall have no obligation to calculate the amount due and payable with respect to any Other Liabilities, but may rely upon a written notice from the applicable Provider provided pursuant to Section 9.11(a). In the absence of an updated written notice, the Administrative Agent shall be entitled to assume that the amount due and payable to the applicable Provider is the amount last certified to the Administrative Agent by such Provider as being due and payable (less any distributions made to such Provider on account thereof). The Borrowers may obtain Bank Products or Cash Management Services from any Provider, although Borrowers are not required to do so. Each Borrower acknowledges and agrees that no Provider has committed to provide any Bank Products or Cash Management Services and that any provision of any Bank Products or Cash Management Services by any Provider is in the sole and absolute discretion of such Provider.

ARTICLE X.
MISCELLANEOUS

10.01 Amendments, Etc. 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 Administrative Agent, with the Consent of the Required Lenders, and the Lead Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or Consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written Consent of such Lender;

(b) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including the Maturity Date) or mandatory prepayment of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written Consent of such Lender entitled to such payment, or (ii) any scheduled or mandatory reduction or termination of the Aggregate Commitments, U.S. Commitments or Canadian Commitments hereunder or under any other Loan Document without the written Consent of such Lender;

(c) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Loan held by such Lender, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender, without the written Consent of each Lender entitled to such amount; provided, however, that only the Consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate;

(d) as to any Lender, change Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written Consent of such Lender;

(e) 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 make any determination or grant any consent hereunder, without the written Consent of each Lender;

(f) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;

(g) except as provided in Section 2.15, increase the Aggregate Commitments without the written Consent of each Lender;

(h) except for Permitted Dispositions, release all or substantially all of the Collateral from the Liens of the Security Documents without the written Consent of each Lender;

(i) change the definition of the terms "Borrowing Base", "U.S. Borrowing Base" or "Canadian Borrowing Base" or any component definition of any of the foregoing 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 Administrative Agent to change, establish or eliminate any Reserves;

(j) modify the definition of Permitted Overadvance so as to increase the amount thereof or, except as provided in such definition, the time period which a Permitted Overadvance may remain outstanding without the written Consent of each Lender; and

(k) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written Consent of each Lender;

and, provided further, that (i) no amendment, waiver or Consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or Consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or Consent shall, unless in writing

and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iv) no amendment, waiver or Consent shall, unless in writing and signed by the Collateral Agent in addition to the Lenders required above, affect the rights or duties of the Collateral Agent under this Agreement or any other Loan Document; and (v) 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, (i) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or Consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender, and (ii) no provider or holder of any Bank Products or Cash Management Services shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any Loan Party.

If any Lender does not Consent (a "Non-Consenting Lender") to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the Consent of each Lender and that has been approved by the Required Lenders, the Lead Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Lead Borrower to be made pursuant to this paragraph).

10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except as provided in subsection (b) below, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows:

(i) if to the Loan Parties, the Agents, the L/C Issuer or the Swing Line Lender, to the address, telecopier number or electronic mail address specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number or electronic mail address specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Loan Parties, the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication

(including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative 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 Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Lead Borrower 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 Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall any Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Loan Parties' or any Agent's transmission of Borrower Materials or any other communications through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Loan Parties, the Agents, the L/C Issuer and the Swing Line Lender may change its address or telecopier for notices and other communications hereunder, or, solely with respect to communications, may change its telephone number, by notice to the other parties hereto. Each other Lender may change its address or telecopier number for notices and other communications hereunder by notice to the Lead Borrower, the Agents, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Agents, L/C Issuer and Lenders. The Agents, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, all Requests for Credit

Extensions) 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 Agents, 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 (including, without limitation, pursuant to any Requests for Credit Extensions). All telephonic notices to and other telephonic communications with the Agents may be recorded by the Agents, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether any Credit Party may have had notice or knowledge of such Default at the time.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay all Credit Party Expenses.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agents (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 fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrowers or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agents (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), any bank advising or confirming a Letter of Credit or any other nominated person with respect to a Letter of Credit seeking to be reimbursed or indemnified or compensated, and any third party seeking to enforce the rights of a Borrower, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds, or holder of an instrument or document related to any Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, a Blocked Account Bank or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the

comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Related Parties or (y) result from a claim brought by a Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrowers or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. Without limiting their obligations under Section 9.14 hereof, to the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, each Lender severally agrees to pay to the Agents (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agents (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Agents (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of any Agent and the L/C Issuer, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Aggregate 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 Agents upon demand its Applicable Percentage (without duplication) of any amount so recovered

from or repaid by the Agents, 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 Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.06(b), participations in L/C Obligations and Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate or branch of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 unless the Administrative Agent consents (such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitments assigned, except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans;

(iii) Required Consents. The following consents shall be required for the assignments described below in this Section 10.06(b)(iii):

(A) the consent of the Lead Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment, (2) such assignment is in connection with any merger, amalgamation, consolidation, sale, transfer or other disposition of all or any substantial portion of the business or loan portfolio of the assigning Lender, or (3) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required unless (1) such assignment is in connection with any merger, amalgamation, consolidation, sale, transfer or other disposition of all or any substantial portion of the business or loan portfolio of the assigning Lender, or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the assignment of any Commitment;

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $5,000; provided, however, that the Administrative 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 Administrative Agent an Administrative Questionnaire;

(v) Proportional Assignments. In the case of an assignment or transfer by a U.S. Lender of its U.S. Commitment (or portion thereof) there is a corresponding assignment or transfer by the related Canadian Lender (which may, in certain circumstances, be the same institution) to the relevant assignee (or Affiliate or branch thereof, or which may, in certain circumstances, be the same institution) of an amount which bears the same proportion to the related Canadian Commitment as the amount assigned or transferred by the U.S. Lender bears to the U.S. Lender's Commitment, and vice versa in the case of an assignment or transfer by a Canadian Lender.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of

Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, with the written consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) and, unless an Event of Default has occurred and is continuing, the Lead Borrower (such consent not to be unreasonably withheld or delayed), sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Loan Parties, the Agents, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Lead Borrower is

notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time any Lender acting as L/C Issuer and/or Swing Line Lender assigns all of its Commitment and Loans pursuant to subsection (b) above, (i) such Lender shall, upon 30 days' notice to the Lead Borrower and the Lenders, resign as L/C Issuer, if applicable, and/or (ii) such Lender shall, upon 30 days' notice to the Lead Borrower, resign as Swing Line Lender, if applicable. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Lead Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Lead Borrower to appoint any such successor shall affect the resignation of such Lender as L/C Issuer and/or Swing Line Lender, as the case may be. If any Lender resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans pursuant to Section 2.03(e)). If any Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the resigning L/C Issuer to effectively assume the obligations of the resigning L/C Issuer with respect to such Letters of Credit.

10.07 Treatment of Certain Information; Confidentiality. Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives in connection with, or as a result of, the performance by such Credit Party or its Affiliates of their respective obligations under this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agents (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory

authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Loan Party and its obligations, (g) with the consent of the Lead Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

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

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to property of a Loan Party, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent or the Required Lenders, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other

rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer (through the Administrative Agent) agrees to notify the Lead Borrower and the Administrative 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.

(a) Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

(b) In no event shall the aggregate "interest" (as defined in Section 347 of the Criminal Code (Canada), as the same shall be amended, replaced or re-enacted from time to time (the "Criminal Code Section") payable (whether by way of payment, collection or demand) by any Loan Party to the Administrative Agent or the Lenders under this Agreement or any other Loan Document exceed the effective annual rate of interest on the "credit advanced" (as defined in that section) under this Agreement or such other Loan Document lawfully permitted under that section and, if any payment, collection or demand pursuant to this Agreement or any other Loan Document in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection or demand shall be deemed to have been made by the mutual mistake of the Administrative Agent, the Lenders and such Loan Party, with such "interest" deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the Criminal Code Section, to result in a receipt by the Administrative Agent and the Lenders of interest at a rate not in contravention of the Criminal Code Section, such adjustment to be effected, to the extent necessary, as follows: firstly, by reducing the amounts or rates of interest required to be paid to the Administrative Agent and the Lenders; and then, by reducing any fees, charges, commissions, premiums, expenses and other amounts required to be paid to the Administrative Agent or the Lenders which would constitute "interest" under the Criminal Code Section. Notwithstanding the foregoing, and after giving effect to all such adjustments, if the Administrative Agent or the Lenders shall have received an amount in excess of the maximum permitted by the Criminal Code Section, then the applicable Canadian Loan Party shall be entitled, by notice in writing to the Administrative Agent, to obtain reimbursement from the Administrative Agent and the Lenders in an amount equal to such excess.

(c) Any provision of this Agreement or any other Loan Document that would oblige any Loan Party to pay any fine, penalty or rate of interest on any arrears of principal or interest secured by a mortgage on real property, in each case, in Canada, that has the effect of increasing the charge on arrears beyond the rate of interest payable on principal money not in arrears shall not apply to such Loan Party, who shall be required to pay interest on money in arrears at the same rate of interest payable on principal money not in arrears.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, 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 at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding. Further, the provisions of Sections 3.01, 3.04, 3.05 and 10.05 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agents may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities, and (z) any Obligations that may thereafter arise under Section 10.04.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such

obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Administrative 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, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF 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, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY HERETO 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 APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS

SECTION. EACH OF THE LOAN PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) ACTIONS COMMENCED BY LOAN PARTIES. EACH LOAN PARTY AGREES THAT ANY ACTION COMMENCED BY ANY LOAN PARTY ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR ANY FEDERAL COURT SITTING THEREIN AS THE ADMINISTRATIVE AGENT MAY ELECT IN ITS SOLE DISCRETION AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification

hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

10.17 Patriot Act and Canadian AML Legislation Notice. Each Lender that is subject to the requirements of the Patriot Act and/or the Canadian AML Legislation hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act and/or the Canadian AML Legislation, as applicable, 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 to identify each Loan Party in accordance with the Patriot Act and/or the Canadian AML Legislation, as applicable. In addition, each Agent and each Lender shall have the right to periodically conduct due diligence (including, without limitation, in respect of information and documentation as may reasonably be requested by such Agent or such Lender from time to time for purposes of compliance by such Agent or such Lender with applicable Laws (including, without limitation, the Patriot Act, the Canadian AML Legislation and other "know your customer" and Anti-Money Laundering Laws), and any policy or procedure implemented by the Agent or such Lender to comply therewith) on all Loan Parties, their senior management and key principals and legal and beneficial owners. Each Loan Party agrees to cooperate in respect of the conduct of such due diligence and further agrees that the reasonable costs and charges for any such due diligence by the Agents shall constitute Credit Party Expenses hereunder and be for the account of the Borrowers. If the Administrative Agent has ascertained the identity of any Canadian Loan Party or any authorized signatories of any Canadian Loan Party for the purposes of the Canadian AML Legislation, then the Administrative Agent:

(a) shall be deemed to have done so as an agent for each Revolving Lender and this Agreement shall constitute a "written agreement" in such regard between each Revolving Lender and the Administrative Agent within the meaning of the applicable Canadian AML Legislation; and

(b) shall provide to each Revolving Lender, copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each Revolving Lender agrees that the Administrative Agent has no obligation to ascertain the identity

of any Canadian Loan Party or any authorized signatories of a Canadian Loan Party on behalf of any Revolving Lender, or to confirm the completeness or accuracy of any information it obtains from any Canadian Loan Party or any such authorized signatory in doing so.

10.18 Time of the Essence. Time is of the essence of the Loan Documents.

10.19 Press Releases. Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of Administrative Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to Administrative Agent and without the prior written consent of Administrative Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under applicable Law and then, in any event, such Credit Party or Affiliate will consult with Administrative Agent before issuing such press release or other public disclosure. Each Loan Party consents to the publication by Administrative Agent, any Lender or their respective representatives of advertising material, including any "tombstone," press release or comparable advertising, on its website or in other marketing materials of the Administrative Agent, relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo, trademark or other insignia. Administrative Agent or such Lender shall provide a draft reasonably in advance of any advertising material, "tomb stone" or press release to the Lead Borrower for review and comment prior to the publication thereof. Administrative Agent reserves the right to provide to industry trade organizations and loan syndication and pricing reporting services information necessary and customary for inclusion in league table measurements.

10.20 Additional Waivers.

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

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

or equity (other than the indefeasible payment in full in cash of all the Obligations after the termination of the Commitments).

(c) To the fullest extent permitted by applicable Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. After the occurrence and during the continuance of an Event of Default, the Collateral Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been indefeasibly paid in full in cash and the Commitments have been terminated. Each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

(d) Each Borrower is obligated to repay the Obligations as joint and several obligors under this Agreement. Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations and the date that the Commitments have been terminated. 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 Administrative Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Revolving Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Borrowers in an amount, for each of such other Borrowers, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101 (31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

10.21 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.

10.22 Foreign Asset Control Regulations. Neither of the advance of the Loans or issuance of Letters of Credit nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order"), (b) the Patriot Act, and (c) the Canadian AML Legislation. 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.

10.23 Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

10.24 Acknowledgment and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

10.25 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under the

Facility Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.25 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.25, or otherwise under the Facility Guaranty, voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until payment in full of the Obligations. Each Qualified ECP Guarantor intends that this Section 10.25 constitute, and this Section 10.25 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

10.26 Amendment and Restatement. This Agreement is an amendment and restatement of the Existing Credit Agreement, it being acknowledged and agreed that as of the Restatement Date all obligations outstanding under or in connection with the Existing Credit Agreement and any of the other Loan Documents (such obligations, collectively, the "Existing Obligations") constitute obligations under this Agreement. This Agreement is in no way intended to constitute a novation of the Existing Credit Agreement or the Existing Obligations. With respect to (i) any date or time period occurring and ending prior to the Restatement Date, the Existing Credit Agreement and the other Loan Documents shall govern the respective rights and obligations of any party or parties hereto also party thereto and shall for such purposes remain in full force and effect; and (ii) any date or time period occurring or ending on or after the Restatement Date, the rights and obligations of the parties hereto shall be governed by this Agreement (including, without limitation, the exhibits and schedules hereto) and the other Loan Documents. From and after the Restatement Date, any reference to the Existing Credit Agreement in any of the other Loan Documents executed or issued by and/or delivered to any one or more parties hereto pursuant to or in connection therewith shall be deemed to be a reference to this Agreement, and the provisions of this Agreement shall prevail in the event of any conflict or inconsistency between such provisions and those of the Existing Credit Agreement.

10.27 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to any Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by such Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, such Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to any Agent or any Lender from any Loan Party in the Agreement Currency, such Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify such Agent or such Lender, as the case may be, against such loss.

If the amount of the Agreement Currency so purchased is greater than the sum originally due to any Agent or any Lender in such currency, such Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Loan Party (or to any other Person who may be entitled thereto under applicable Law).

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

THE CHILDREN'S PLACE, INC., as Lead Borrower and as a U.S. Borrower

By: _____
Name: _____
Title: _____

THE CHILDREN'S PLACE SERVICES COMPANY, LLC, as a U.S. Borrower

By: _____
Name: _____
Title: _____

THE CHILDREN'S PLACE (CANADA), LP, by its general partner, TCP INVESTMENT CANADA II CORP., as a Canadian Borrower

By: _____
Name: _____
Title: _____

THECHILDRENSPLACE.COM, INC., as a Guarantor

By: _____
Name: _____
Title: _____

THE CHILDREN'S PLACE INTERNATIONAL, LLC, as a Guarantor

By: _____
Name: _____
Title: _____

THE CHILDREN'S PLACE CANADA HOLDINGS, INC., as a Guarantor

By: _____
Name: _____
Title: _____

TCP IH II, LLC, as a Guarantor

By: _____
Name: _____
Title: _____

TCP REAL ESTATE HOLDINGS, LLC, as a Guarantor

By: _____
Name: _____
Title: _____

TCP INTERNATIONAL PRODUCT HOLDINGS, LLC, as a Guarantor

By: _____
Name: _____
Title: _____

TCP INVESTMENT CANADA II CORP., as a Guarantor

By: _____
Name: _____
Title: _____

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, as Collateral Agent, as L/C Issuer, as Swing Line Lender and as a Lender

By: _____
Name: _____
Title: _____

WELLS FARGO CAPITAL FINANCE CORPORATION CANADA, as L/C Issuer, as Swing Line Lender and as a Canadian Lender

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N.A., as a U.S. Lender

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N.A. (acting through its Canada branch), as a Canadian Lender

By: _____
Name: _____
Title: _____

HSBC BANK USA, NATIONAL ASSOCIATION,
as a U.S. Lender and as a Canadian Lender

By: _____
Name: _____
Title: _____

JPMORGAN CHASE BANK, N.A., as a U.S. Lender

By: _____
Name: _____
Title: _____

JPMORGAN CHASE BANK, N.A., TORONTO BRANCH, as a Canadian Lender

By: _____
Name: _____
Title: _____

Signature Page to Amended and Restated Credit Agreement

EXHIBIT 10.6

ASSET PURCHASE AGREEMENT

dated as of March 1, 2019

by and among

TCP Brands, LLC,
as Buyer,

and

GYMBOREE GROUP, INC.

and

ITS SUBSIDIARIES SIGNATORY HERETO,
as Sellers

TABLE OF CONTENTS

Page

Page

Page

TABLE OF CONTENTS
(continued)

Page

Page

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of March 1, 2019 (the "Agreement Date"), by and among Gymboree Group, Inc., a Delaware corporation ("Gemstone"), and each of Gemstone's Subsidiaries listed on the signature page hereto (together with Gemstone, "Sellers" and each, a "Seller"), and TCP Brands, LLC, a Delaware limited liability company ("Buyer"). Each Seller and Buyer are referred to herein individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Sellers are currently engaged in the Business;

WHEREAS, on January 17, 2019 (the "Petition Date"), each of Gymboree Group, Inc., Gymboree Intermediate Corporation, Gymboree Holding Corporation, Gymboree Wholesale, Inc., Gym-Mark, Inc., Gymboree Operations, Inc., Gymboree Distribution, Inc., Gymboree Manufacturing, Inc., Gymboree Retail Stores, LLC, Gym-Card, LLC, and Gymboree Island, LLC (each a "Debtor" and collectively, the "Debtors") filed a voluntary petition and commenced a case (collectively, the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court;

WHEREAS, on the terms and subject to the conditions set forth herein and subject to the approval of the Bankruptcy Court, (a) Sellers wish to sell to Buyer, and Buyer wishes to purchase from Sellers, the Acquired Assets as of the Closing, and (b) Buyer is willing to assume from Sellers the Assumed Liabilities as of the Closing; and

WHEREAS, prior to the execution and delivery of this Agreement, Buyer deposited into an account of Sellers an amount equal to $210,000 and, on or prior to March 4, 2019, Buyer shall deposit an incremental deposit amount so that the aggregate amount deposited is equal to $7,600,000 (the "Deposit") in accordance with the Bidding Procedures.

NOW, **THEREFORE**, in consideration of the representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

Article 1
DEFINITIONS

1.1 Defined Terms. As used herein, the terms below shall have the following respective meanings:

"Acquired Assets" shall have the meaning specified in Section 2.1.

"Acquired Business Information" shall mean all books, financial information, records, files, ledgers, documentation, instruments, research, papers, data, marketing materials and information, sales or technical literature or similar information that, in each case, is in the possession or control of any Seller and, in each case, is primarily or exclusively related to the Acquired Assets, including, for the avoidance of doubt, files and assignment documentation pertaining to existence, availability, registrability or ownership of any of the Transferred Intellectual Property and documentation of the development, conception or reduction to practice thereof.

"Affiliate" shall, with respect to any Person, mean any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, through ownership of voting securities or rights, by contract, as trustee, executor or otherwise.

"Agreement" shall mean this Asset Purchase Agreement, together with the exhibits and the Disclosure Schedules, in each case as amended, restated, supplemented or otherwise modified from time to time.

"Agreement Date" shall have the meaning specified in the preamble.

"Allocation" shall have the meaning specified in Section 3.3.

"Alternative Transaction" shall mean (i) any investment in, financing of, capital contribution or loan to, or restructuring or recapitalization of a Seller or any Affiliate of a Seller (including any exchange of all or a substantial portion of a Seller's or its Affiliates' outstanding debt obligations for equity securities of one or more Sellers or their respective Affiliates), (ii) any merger, consolidation, share exchange or other similar transaction to which a Seller or any of its Affiliates is a party that has the effect of transferring, directly or indirectly, all or a substantial portion of the assets of, or any issuance, sale or transfer of equity interests in, a Seller, the Acquired Assets or the Business, (iii) any direct or indirect sale of all or a substantial portion of the assets of, or any issuance, sale or transfer of equity interests in, a Seller, the Acquired Assets or the Business or (iv) any other transaction, including a plan of liquidation or reorganization (in any jurisdiction, whether domestic, foreign, international or otherwise), in each instance (A) that transfers or vests ownership of, economic rights to, or benefits in all or a substantial portion of the Acquired Assets or the Business to any party other than Buyer and (B) whether or not such transactions are entered into in connection with any bankruptcy, insolvency or similar Proceedings; provided, however, that notwithstanding the foregoing, any investment in, financing of, capital contribution or loan to, or any sale of assets of, a Seller or any Affiliate of a Seller that would not reasonably be expected to, individually or in the aggregate, interfere with or impede the Transactions, interfere with, limit or modify any of Buyer's rights or privileges hereunder or result in the imposition of any liabilities or costs on Buyer or any of its Affiliates shall not be considered an "Alternative Transaction".

"Anti-Corruption Laws" shall mean applicable laws enacted to prohibit bribery and corruption, including the U.S. Foreign Corrupt Practices Act of 1977 (as amended), the UK Bribery Act 2010, and applicable laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

"Anti-Corruption Prohibited Activity" shall mean (a) using funds in violation of Anti-Corruption Laws for unlawful contributions, gifts, or entertainment, or other unlawful expenses relating to political activity, or (b) making or taking an act in furtherance of an offer, promise, or authorization of any bribe, rebate, payoff, influence payment, kickback or other similar payment, whether directly or indirectly to any Governmental Entity or to any

private commercial entity for the purpose of either gaining an improper business advantage or encouraging the recipient to violate the policies of his or her employer or to breach an obligation of good faith or loyalty in violation of Anti-Corruption Laws.

"Anti-Money Laundering Laws" shall mean applicable laws relating to money laundering and terrorism financing, including the USA PATRIOT Act of 2001, the U.S. Money Laundering Control Act of 1986, as amended; the applicable financial recordkeeping and reporting requirements of the U.S. Currency and Foreign Transaction Reporting Act of 1970, as amended; the EU Anti-Money Laundering Directives and any laws, decrees, administrative orders, circulars, or instructions implementing or interpreting the same; and other similar applicable laws and regulations.

"Approved Budget" shall have the meaning specified in the DIP Facility.

"Assignment and Assumption Agreement" shall mean one or more assignment and assumption agreements to be entered into by Sellers and Buyer concurrently with the Closing in a form mutually agreed to by the Parties.

"Assumed Contracts" shall have the meaning specified in Section 2.1(d).

"Assumed Liabilities" shall have the meaning specified in Section 2.3.

"Auction" shall have the meaning specified in the Bidding Procedures.

"Avoidance Actions" shall mean any and all claims for relief of any Seller under chapter 5 of the Bankruptcy Code.

"Back-Up Bidder" shall have the meaning specified in Section 6.2.

"Bankruptcy Code" shall have the meaning specified in the recitals.

"Bankruptcy Court" shall mean the United States Bankruptcy Court for the Eastern District of Virginia (Richmond Division).

"Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases, and the general, local and chambers rules of the Bankruptcy Court.

"Base Purchase Price" shall have the meaning specified in Section 3.2(a).

"Benefit Plan" shall mean any employee benefit plan (as defined in Section 3(3) of ERISA) or any deferred compensation, bonus, pension, retirement, profit sharing, savings, incentive compensation, stock purchase, stock option or other equity or equity-linked compensation, disability, death benefit, hospitalization, medical, dental, life, employment, retention, change in control, termination, severance, separation, vacation, sick leave, holiday pay, paid time off, leave of absence, fringe benefit, compensation, incentive, insurance, welfare or any similar plan, program, policy, practice, agreement or arrangement (including any funding mechanism therefor), written or oral, whether or not subject to ERISA, and whether funded or unfunded, in each case that is adopted, sponsored, maintained, entered into, contributed to, or required to be maintained or contributed to, by any Seller or any Subsidiary of any Seller for the benefit of any Employee, or pursuant to or in connection with which any Seller or any Subsidiary of any Seller could have any Liabilities in respect of any Employee or beneficiary of any Employee.

"Bidding Procedures" shall mean the bid procedures approved by the Bankruptcy Court pursuant to the Bidding Procedures Order.

"Bidding Procedures Order" shall mean the Order of the Bankruptcy Court entered on January 17, 2019 [Docket 76] approving procedures for submitting bids and conducting an auction for the sale of the Acquired Assets (among other things).

"Business" shall mean (i) the Coral E-Commerce Business, (ii) the Gemstone E-Commerce Business and the (iii) Gemstone and Coral Brick and Mortar Business; provided that, in each case, if the context expressly refers to the conduct of the Business following the Closing, then the "Business" shall refer to any such business as conducted by Buyer and its Affiliates following the Closing.

"Business Day" shall mean any day other than a Saturday, Sunday or a legal holiday on which banking institutions in the State of New York are not required to open.

"Buyer" shall have the meaning specified in the preamble.

"Buyer Material Adverse Effect" shall mean a material adverse effect on the ability of Buyer to consummate the Transactions.

"Buyer Released Parties" shall have the meaning specified in Section 9.20.

"Chapter 11 Cases" shall have the meaning specified in the recitals.

"Claim" shall mean all actions, claims, counterclaims, suits, proceedings, rights of action, causes of action, Liabilities, losses, damages, remedies, penalties, judgments, settlements, costs, expenses, fines, disbursements, demands, reasonable costs, fees and expenses of counsel, including in respect of investigation, interest, demands and actions of any nature or any kind whatsoever, known or unknown, disclosed or undisclosed, accrued or unaccrued, matured or unmatured, choate or inchoate, legal or equitable, and arising in tort, contract or otherwise, including any "claim" as defined in the Bankruptcy Code.

"Closing" shall have the meaning specified in Section 3.1(a).

"Closing Date" shall have the meaning specified in Section 3.1(a).

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Contract" shall mean any contract, agreement, indenture, note, bond, loan, instrument, lease, conditional sales contract, purchase order, mortgage, license, franchise, insurance policy, letter of credit, commitment or other binding arrangement or commitment, whether or not in written form, that is binding upon a Person or any of its property.

"Coral Acquired Assets" shall mean the Acquired Assets that were used primarily in connection with the portion(s) of the Business that is (are) associated with the "Crazy 8®" brand name.

"Coral E-Commerce Business" shall mean Sellers' business of (i) owning, exploiting, and licensing the brand name "Crazy 8®" (and certain other Trademarks that are not included in the Transferred Intellectual Property) and (ii) distributing and selling children's clothing and apparel under the brand name "Crazy 8®" through a series of software and hardware applications including computer hardware and cloud servers, that are integrated into, and through which Sellers sell inventory to consumers who place orders for such inventory through, the www.Crazy8.com (and similar permutations thereof) website but excluding the Contracts pursuant to which such software and hardware applications are owned or licensed by Sellers.

"Credit Agreement" shall mean that certain Credit Agreement, dated as of September 29, 2017, by and among Gemstone, as lead borrower, Gymboree Intermediate Corporation, as a guarantor, Goldman Sachs Specialty Lending Group, Inc., in its capacity as Administrative Agent, and the lenders and other parties party thereto.

"Cure Costs" shall mean all cure costs that must be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assumed Contracts as finally determined by the Bankruptcy Court.

"Customer Data" shall have the meaning specified in Section 2.1(f).

"Debtors" shall have the meaning specified in the recitals.

"Deposit" shall have the meaning specified in the recitals.

"Designated Purchaser" shall have the meaning specified in Section 2.1.

"DIP Facility" shall mean that certain Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of January 18, 2019, by and among Gemstone, the other Borrowers (as defined therein) party thereto from time to time, Gymboree Intermediate Corporation, a Delaware corporation, the other Guarantors (as defined therein) party thereto from time to time, each a debtor and debtor-in-possession in cases pending under chapter 11 of the Bankruptcy Code, the Lenders (as defined therein) and Special Situations Investing Group, Inc., a Delaware corporation, as Administrative Agent and Collateral Agent.

"Disclosure Schedules" shall mean the disclosure schedules, delivered by Sellers and Buyer concurrently with the execution and delivery of this Agreement, as amended from time to time in accordance with and subject to the terms hereof.

"Domain License Expiration Date" shall have the meaning specified in Section 6.20(a).

"Domain Name Assignment Agreement" shall mean one or more domain name assignment agreements to be entered into by Sellers and Buyer concurrently with the Closing (or, solely with respect to the Specified Domain Names, the Subsequent Closing) in a form mutually agreed to by the Parties.

"E-Commerce Platform" shall mean the series of software and hardware applications including computer hardware and cloud servers, that are integrated into, and through which Sellers sell inventory to consumers who place orders for such inventory through, the www.Crazy8.com and www.Gymboree.com (and similar permutations thereof) websites, including the Contracts pursuant to which such software and hardware applications are owned or licensed by Sellers.

"Environmental Laws" shall mean all Laws relating to pollution, storage, transport, release of, contamination by, or exposure to Hazardous Materials, or protection of the environment, natural resources, human safety, or human health (to the extent related to exposure to Hazardous Materials).

"Equipment" shall have the meaning specified in Section 2.2(t).

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

"Excluded Assets" shall have the meaning specified in Section 2.2.

"Excluded Contracts" shall mean all Contracts other than Assumed Contracts.

"Excluded Information" shall mean (i) any personnel records, books, files or other documentation relating to any employees; (ii) any Tax records, (iii) any books, records, files, ledgers, documentation or similar information that any Seller is required by Law (including Laws relating to privilege or privacy) or by any Contract to retain and/or not to disclose; provided that to the extent any such information described in this clause (iii) relates to the Acquired Assets, Sellers will disclose the existence of such confidential information and the applicable contract or agreement to which it relates and Sellers will use their respective commercially reasonable efforts to seek waivers from the relevant third party in order to provide Buyer such information and (iv) all records and reports prepared by or for any Seller or its Affiliates or Representatives in connection with the sale of Sellers, any of their Affiliates or any of their respective businesses or any portion thereof (including the Business), including all analyses relating thereto so prepared or received, all confidentiality agreements with prospective purchasers thereof and all bids and expressions of interest received from third parties with respect thereto; provided that this clause (iv) will not exclude any diligence information regarding the Acquired Assets, the Assumed Liabilities or the Business that was provided or made available to other bidders or potential bidders in connection with the Auction process.

"Excluded Liabilities" shall have the meaning specified in Section 2.4.

"Export Control and Customs Laws" shall mean applicable export control laws and regulations, including the EC Regulation 428/2009 and the implementing laws and regulations of the EU member states; the U.S. Export Administration Act, U.S. Export Administration Regulations, U.S. Arms Export Control Act, U.S. International Traffic in Arms Regulations, and their respective implementing rules and regulations; the U.K. Export Control Act 2002 (as amended and extended by the Export Control Order 2008); and all import laws administered by all applicable Governmental Entities, including the Tariff Act of 1930, as amended, the Trade Act of 1974, the Trade Expansion Act of 1962, and other Laws and programs administered or enforced by the U.S. Department of Commerce, U.S. International Trade Commission, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement and their predecessor agencies.

"Facilities" shall mean all buildings and fixtures owned or leased by Sellers, located on the Leased Real Property and Relating to the Business, but excluding for the avoidance of doubt (i) power lines, pipelines, telephone lines and other improvements and fixtures owned by public utilities furnishing utilities to the Leased Real Property, and (ii) rail lines, pipelines and other improvements and fixtures owned by third parties and located on existing easements for such purpose which encumber the Leased Real Property.

"Fraud" shall mean, with respect to any Party, an actual and intentional fraud by such Party with respect to the making of any representation or warranty by such Party set forth in this Agreement or in any other Transaction Document.

"GAAP" shall mean generally accepted accounting principles as in effect from time to time in the United States.

"Gemstone" shall have the meaning specified in the preamble.

"Gemstone Acquired Assets" shall mean the Acquired Assets that were used primarily in connection with the portion(s) of the Business that is (are) associated with the "Gymboree®" brand name.

"Gemstone and Coral Brick and Mortar Business" shall mean Sellers' business of operating brick-and-mortar retail stores under the "Gymboree®" and "Crazy 8®" brand names and selling children's clothing and apparel under the "Gymboree®" and "Crazy 8®" brand names or related Trademarks included in the Transferred Trademarks at such retail store locations, including the Inventory in Sellers' distribution center(s) that has been purchased for use in such retail stores.

"Gemstone E-Commerce Business" shall mean Sellers' businesses of (i) owning, exploiting, and licensing the brand name "Gymboree®" (and certain other Trademarks included in the Transferred Intellectual Property, including under the Assumed Contracts) and (ii) distributing and selling children's clothing and apparel under the brand name "Gymboree®" through the E-Commerce Platform; provided that, in each case, if the context expressly refers to the conduct of the Gemstone E-Commerce Business following the Closing, then the "Gemstone E-Commerce Business" shall refer to such business as conducted by Buyer and its Affiliates following the Closing.

"Governmental Entity" shall mean any federal, state, provincial, local, municipal, foreign, multinational, international or other (a) government, (b) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), or (c) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature, including any arbitration tribunal or stock exchange.

"Gym-IPCO" shall mean Gym-IPCO, LLC, a Delaware limited liability company.

"Gym-IPCO Interests" shall mean 50% of the limited liability company interests of Gym-IPCO.

"Gym-IPCO LLC Agreement" shall mean that certain Limited Liability Company Agreement of Gym-IPCO, dated as of July 15, 2016.

"Hazardous Material" shall mean any material, substance or waste defined, listed or regulated as a "contaminant" or "pollutant" or as "hazardous" or "toxic" (or words of similar meaning or intent) under any applicable Environmental Law, including materials exhibiting the characteristics of ignitability, corrosivity, reactivity or toxicity, as such terms are defined in connection with hazardous materials, hazardous wastes or hazardous or toxic substances in any applicable Environmental Law and including asbestos, petroleum and petroleum breakdown constituents and polychlorinated biphenyls.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and any successor law and the rules and regulations thereunder or under any successor law.

"Intellectual Property" shall mean any and all worldwide rights in and to all intellectual property rights or assets (whether arising under statutory or common law, contract or otherwise), which include all of the following items: (i) inventions, discoveries, processes, designs, tools, molds, techniques, developments and related improvements whether or not patentable; (ii) patents, patent applications, industrial design registrations and applications therefor, divisions, divisionals, continuations, continuations-in-part, reissues, substitutes, renewals, registrations, confirmations, re-examinations, extensions and any provisional applications, requests for continuing examinations or continuing prosecution applications, or any such patents or patent applications, and any foreign or international equivalent of any of the foregoing; (iii) trademarks (whether registered, unregistered or pending), historical trademark files, trade dress, service marks, service names, trade names, brand names, product names, logos, distinguishing guises and indicia, domain names, internet rights (including IP Addresses and AS numbers), social media addresses and accounts, corporate names, fictitious names, other names, symbols (including business symbols), slogans, translations of any of the foregoing and any foreign or international equivalent of any of the foregoing and all goodwill associated therewith and (to the extent transferable by Law) any applications and/or registrations in connection with the foregoing and all advertising and marketing collateral including any of the foregoing ("Trademarks"); (iv) work specifications, tech specifications, databases and artwork; (v) technical scientific and other know-how and information (including promotional material), trade secrets, confidential information, methods, processes, practices, formulas, designs, design rights, patterns, assembly procedures, and specifications; (vi) drawings, prototypes, molds, models, tech packs, artwork, archival materials and advertising materials, copy, commercials, images, artwork and samples; (vii) rights associated with works of authorship including copyrights, moral rights, design rights, rights in databases, copyright applications, copyright registrations, rights existing under any copyright laws and rights to prepare derivative works; (viii) work for hire; (ix) all tangible embodiments of, and all intangible rights in, the foregoing; (x) the right to sue for infringement and other remedies against infringement of any of the foregoing, including the right to sue and collect for past infringement; and (xi) rights to protection of interests in the foregoing under the laws of all jurisdictions.

"Interim Period" shall have the meaning specified in Section 6.1.

"Inventory" shall mean any inventories of finished goods, children's clothing and apparel and packaging and supplies.

"Jewel Brick and Mortar Business" shall mean Sellers' business of operating brick-and-mortar retail stores under the "Janie and Jack®" brand name and selling children's clothing and apparel under the "Janie and Jack®" brand name or related Trademarks included in the Transferred Trademarks at such retail store locations.

"Jewel Business" shall mean the "Janie and Jack®" business as conducted as of the Agreement Date, including (i) the Jewel E-Commerce Business, (ii) the Jewel Brick and Mortar Business and (iii) designing, sourcing, importing, marketing, advertising, promoting, distributing and selling children's clothing and apparel under the brand name "Janie and Jack®" through distribution and sales to domestic and international customers and distributors and through the Jewel Brick and Mortar Business and/or the Jewel E-Commerce Business; provided that, in each case, if the context

expressly refers to the conduct of the Jewel Business following the Closing, then the "Jewel Business" shall refer to such business as conducted by Buyer and its Affiliates following the Closing.

"Jewel E-Commerce Business" shall mean Sellers' businesses of (i) owning, exploiting, and licensing the brand name "Janie and Jack®" (and certain other Trademarks included in the Transferred Intellectual Property, including under the Assumed Contracts) and (ii) distributing and selling children's clothing and apparel under the brand name "Janie and Jack®" through the E-Commerce Platform; provided that, in each case, if the context expressly refers to the conduct of the Jewel E-Commerce Business following the Closing, then the "Jewel E-Commerce Business" shall refer to such business as conducted by Buyer and its Affiliates following the Closing.

"Knowledge" shall mean, with respect to Sellers, the actual knowledge of the Chief Executive Officer, Chief Financial Officer, Chief Technology Officer, Chief Information Officer or General Counsel of Gemstone after due inquiry.

"Law" shall mean any federal, state, provincial, local, foreign, international or multinational constitution, statute, law, ordinance, regulation, rule, code, Order, principle of common law, or decree enacted, promulgated, issued, enforced or entered by any Governmental Entity, or court of competent jurisdiction, or other requirement or rule of law.

"Leased Real Property" shall have the meaning specified in Section 2.2(s).

"Liabilities" shall mean, as to any Person, all debts, adverse Claims, liabilities, commitments, responsibilities, and obligations of any kind or nature whatsoever, direct or indirect, absolute or contingent, whether accrued or unaccrued, vested or otherwise, liquidated or unliquidated, whether known or unknown, and whether or not actually reflected, or required to be reflected, in such Person's balance sheet or other books and records.

"Lien" shall have the meaning specified in section 101(37) of the Bankruptcy Code and shall include any pledge, option, charge, lien, debentures, trust deeds, hypothecation, easement, security interest, right-of-way, encroachment, mortgage, deed of trust, defect of title, restriction on transferability, restriction on use or other encumbrance, in each case whether imposed by agreement, law, equity or otherwise.

"Liquidation Agreement" shall mean that certain Agency Agreement, dated as of January 17, 2019, by and among Gemstone and its Subsidiaries party thereto, on the one hand, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, the "Agent"), on the other hand, approved by the Bankruptcy Court.

"Local Bankruptcy Rules" shall mean the Local Bankruptcy Rules for the Eastern District of Virginia (Richmond Division) applicable to all cases in such district governed by the Bankruptcy Code.

"Names" shall have the meaning specified in Section 6.15.

"Necessary Consent" shall have the meaning specified in Section 2.6.

"Neutral Accountant" shall mean a national independent accounting firm selected by Buyer and reasonably acceptable to Sellers.

"Notices" shall have the meaning specified in Section 9.4.

"Order" shall mean any judgment, order, injunction, writ, ruling, decree, stipulation, determination, decision, verdict, or award of any Governmental Entity.

"Ordinary Course of Business" shall mean that an action taken by a Person will be deemed to have been taken in the "Ordinary Course of Business" only if that action is taken in the ordinary course of business of such Person, consistent with past practices, recognizing that Sellers have filed the Chapter 11 Cases.

"Outside Back-Up Date" shall mean the date that is sixty (60) days after the date of the Sale Hearing (as defined in the Bidding Procedures).

"Outside Transaction Date" shall have the meaning specified in Section 8.1(f).

"Owned Equipment" shall have the meaning specified in Section 2.2(t).

"Party" or "Parties" shall have the meaning specified in the preamble.

"Permits" shall mean permits, licenses, registrations, certificates of occupancy, approvals, consents, clearances and other authorizations issued by any Governmental Entity.

"Permitted Liens" shall mean: (a) Liens for Taxes not yet due and payable or which are being contested in good faith by appropriate proceedings; (b) statutory liens of landlords, carriers, warehousemen, mechanics, and materialmen on any Acquired Asset incurred in the Ordinary Course of Business for sums not yet due; (c) liens or encumbrances that arise solely by reason of acts of Buyer or its successors and assigns or otherwise consented to by Buyer in accordance with the terms of this Agreement; (d) any Lien granted or incurred in connection with the Sale Order; and (e) any Lien that will be removed or released prior to or at the Closing (or, solely with respect to the Specified Domain Names, the Subsequent Closing) by operation of the Sale Order or any other Order of the Bankruptcy Court.

"Person" shall mean an individual, a partnership, a joint venture, a corporation, a business trust, a limited liability company, a trust, an unincorporated organization, a joint stock company, a labor union, an estate, a Governmental Entity or any other entity.

"Personal Information" shall have the meaning specified in Section 4.15.

"Petition Date" shall have the meaning specified in the recitals.

"PII" shall have the meaning specified in Section 6.19.

"Post-Closing Covenant" shall have the meaning specified in Section 9.12.

"Power of Attorney Agreement" shall mean one or more power of attorney agreements to be entered into by Sellers concurrently with the Closing in a form mutually agreed to by the Parties.

"PRC Trademark Assignment Agreement" shall mean one or more trademark assignment agreements for the purposes of recordation with the trademark office of the People's Republic of China to be entered into by Sellers and Buyer concurrently with the Closing in a form mutually agreed to by the Parties.

"Proceeding" shall mean any action, arbitration, audit, known investigation (including a notice of preliminary investigation or formal investigation), notice of violation, hearing, litigation or suit (whether civil, criminal or administrative), other than the Chapter 11 Cases, commenced, brought, conducted or heard by or before any Governmental Entity, including but not limited to any and all such actions related to restitution or remission in criminal proceedings and civil forfeiture and confiscation proceedings under the Law of any jurisdiction.

"Property Taxes" shall mean all Real Property Taxes, personal property Taxes and similar ad valorem Taxes.

"Purchase Price" shall have the meaning specified in Section 3.2(a).

"Real Property" shall mean any real estate, land, building, structure, improvement or other real property of any kind or nature whatsoever owned, leased or occupied by any Person, and all appurtenant and ancillary rights thereto, including easements, covenants, water rights, sewer rights and utility rights.

"Registered IP" shall have the meaning specified in Section 4.13(a).

"Relating to the Business" shall mean used primarily or exclusively in the operation or conduct of the Business as conducted as of the date hereof.

"Representative" shall mean, with respect to any Person, such Person's officers, directors, managers, employees, agents, representatives and financing sources (including any investment banker, financial advisor, accountant, legal counsel, consultant, other advisor, agent, representative or expert retained by or acting on behalf of such Person or its Subsidiaries).

"Restricted Party" shall mean (a) any Person or government that is the subject of Sanctions, (b) any Person resident in or organized under the laws of any country or territory that is the subject of country- or territory-wide Sanctions (including Cuba, Iran, North Korea, Syria, or the Crimea region) or (c) owned or controlled by a Person or Persons described in clause (a) or (b).

"Retained Business" shall mean, collectively, any and all businesses and operations conducted by any Seller and/or any of its Affiliates other than the Acquired Assets; provided further that "Retained Business" does not include the Transferred Intellectual Property, except to the extent permitted under Section 6.15 for the period set forth therein.

"Sale Hearing" shall mean the hearing conducted by the Bankruptcy Court to approve the Transactions pursuant to the Sale Order.

"Sale Motion" shall mean the motion of Sellers filed on January 17, 2019 [Docket 76] with the Bankruptcy Court seeking entry of the Bidding Procedures Order and Sale Order.

"Sale Order" shall mean an Order of the Bankruptcy Court, in form and substance approved by Buyer (such approval not to be unreasonably withheld or conditioned so long as the Order is not inconsistent with, and does not limit the rights of Buyer under, this Agreement or the Bidding Procedures), pursuant to, *inter alia*, Sections 105, 363 and 365 of the Bankruptcy Code authorizing and approving, *inter alia*, the sale of the Acquired Assets to Buyer on the terms and conditions set forth herein, free and clear of all encumbrances and the assumption by the applicable Seller and assignment to Buyer of the Assumed Contracts, and containing a finding that Buyer has acted in "good faith" within the meaning of Section 363(m) of the Bankruptcy Code.

"Sanctions" shall mean economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by (a) the U.S. government (including the U.S. Department of State and the Office of Foreign Assets Control of the U.S. Department of the Treasury), (b) the United Nations Security Council, (c) the European Union, (d) Her Majesty's Treasury of the United Kingdom, or (e) other relevant sanctions authority with jurisdiction over any Party.

"Seller" or "Sellers" shall have the meaning specified in the preamble.

"Seller Fundamental Representations" shall have the meaning specified in Section7.1(a).

"Sellers Material Adverse Effect" shall mean any change, effect, event, occurrence, circumstance, state of facts or development that, individually or in the aggregate (taking into account all other such changes, effects, events, occurrences, circumstances, states of facts or developments), (a) has had, or would reasonably be expected to have, a material adverse effect on the ability of Sellers to consummate the Transactions or (b) has had, or would reasonably be expected to have, a material adverse effect on the Business, including the Acquired Assets and the Assumed Liabilities, taken as a whole; provided, however, that with respect to clause (b) only, the term "material adverse effect" shall not include any change, effect, event, occurrence, circumstance, state of facts or development that, directly or indirectly, alone or taken together, arising out of or attributable to: (i) any change generally affecting the international, national or regional markets applicable to the Business; (ii) any changes in, or effects arising from or relating to, national or international political or social conditions, including the engagement by the United States or any other country in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military, cyber or terrorist attack upon the United States or any other country, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, equipment or personnel of the United States; (iii) changes in, or effects arising from or relating to, financial, banking, or securities markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, (C) any decline or rise in the price of any security, commodity, contract or index and (D) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the Transactions contemplated by this Agreement); (iv) changes in Law, GAAP or official interpretations of the foregoing; (v) acts of nature, including outbreaks of illness or health emergencies, hurricanes, storms, floods, earthquakes and other natural disasters or force majeure events; (vi) the effect of any action contemplated by, or failure to take any action prohibited by, this Agreement; (vii) the pendency of the Chapter 11 Cases or the financial condition of Sellers; (viii) any failure, in and of itself, to achieve any budgets, projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (but, for the avoidance of doubt, not the underlying causes of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Sellers Material Adverse Effect); (ix) changes or effects that arise from any

seasonal fluctuations in the Business; (x) any matters arising out of the Chapter 11 Cases, including changes arising from, or effects of, any motion, application, pleading or Order filed under or in connection with, the Chapter 11 Cases and any objections in the Bankruptcy Court to (A) this Agreement and the other Transaction Documents and the Transactions contemplated hereby and thereby, (B) the reorganization of Sellers and any related plan of reorganization or disclosure statement, (C) the Bidding Procedures or the Sale Motion, or (D) the assumption or rejection of any Assumed Contract; (xi) the departure of officers or directors of any Seller after the Agreement Date; (xii) the execution and delivery of this Agreement or the announcement thereof or consummation of the Transactions or the identity, nature or ownership of Buyer, including the impact thereof on the relationships, contractual or otherwise, of the Business with employees, customers, lessors, suppliers, vendors or other commercial partners; and (xiii) any action taken by any Seller at the request of, or with the consent of, Buyer; which, in the case of any of the foregoing clauses (i) through (v) does not disproportionately affect the Business relative to other companies that participate in the markets and industries applicable to the Business.

"Sellers Released Parties" shall have the meaning specified in Section 9.20.

"Sellers' Representative" shall have the meaning specified in Section 9.17.

"Specified Domain Names" means the following internet domain names: www.Crazy8.com and www.Gymboree.com.

"Subsequent Closing" shall have the meaning specified in Section 3.1(a).

"Subsequent Closing Date" shall have the meaning specified in Section 3.1(a).

"Subsidiary" shall mean, with respect to any Person (a) a corporation, a majority of whose capital stock with voting power, under ordinary circumstances, to elect directors is at the time, directly or indirectly, owned by such Person, by a subsidiary of such Person, or by such Person and one or more subsidiaries of such Person, (b) a partnership in which such Person or a subsidiary of such Person is, at the date of determination, a general partner of such partnership, or (c) any other Person (other than a corporation) in which such Person, a subsidiary of such Person or such Person and one or more subsidiaries of such Person, directly or indirectly, at the date of determination thereof, has (i) at least a majority ownership interest thereof or (ii) the power to elect or direct the election of a majority of the directors or other governing body of such Person.

"Successful Bidder" shall mean, if an Auction is conducted, the prevailing party with respect to the Acquired Assets at the conclusion of such Auction.

"Tax" or "Taxes" shall mean any and all taxes, assessments, levies, duties or other governmental charge imposed by any Governmental Entity, including any income, alternative or add-on minimum, accumulated earnings, franchise, capital stock, environmental, profits, windfall profits, gross receipts, sales, use, value added, transfer, registration, stamp, premium, excise, customs duties, severance, Real Property, personal property, ad valorem, occupancy, license, occupation, employment, payroll, social security, disability, unemployment, withholding, corporation, inheritance, value added, stamp duty reserve, estimated or other tax, assessment, levy, duty (including duties of customs and excise) or other governmental charge of any kind whatsoever, including any payments in lieu of taxes or other similar payments, chargeable by any Tax Authority together with all penalties, interest and additions thereto, whether disputed or not.

"Tax Authority" shall mean any taxing or other authority (whether within or outside the U.S.) competent to impose Tax.

"Tax Return" shall mean any and all returns, declarations, reports, documents, Claims for refund, or information returns, statements or filings which are supplied or required to be supplied to any Tax Authority or any other Person, including any schedule or attachment thereto, and including any amendments thereof.

"Termination Date For Use of Name" shall have the meaning specified in Section 6.15.

"Transaction Documents" shall mean this Agreement and any agreement, instrument or other document entered into pursuant to the terms hereof, including the Assignment and Assumption Agreement, the Domain Name Assignment Agreement, the Worldwide Copyright Assignment Agreement, the Worldwide Trademark Assignment Agreement, the U.S. Trademark Assignment Agreement, the PRC Trademark Assignment Agreement and the Power of Attorney Agreement.

"Transactions" shall mean the transactions contemplated by this Agreement to be consummated at the Closing, including the purchase and sale of the Acquired Assets and the assumption of the Assumed Liabilities as provided for in this Agreement.

"Transfer Tax" or "Transfer Taxes" shall mean any sales, use, transfer, conveyance, documentary transfer, stamp, recording or other similar Tax imposed upon the sale, transfer or assignment of property or any interest therein or the recording thereof, and any penalty, addition to Tax or interest with respect thereto, but such term shall not include any Tax on, based upon or measured by, the net income, gains or profits from such sale, transfer or assignment of the property or any interest therein.

"Transferable Permits" shall have the meaning specified in Section 2.1(g).

"Transferred Intellectual Property" shall have the meaning specified in Section 2.1(a)(v).

"Transferred Trademarks" shall have the meaning specified in Section 2.1(a)(iv).

"U.S. Trademark Assignment Agreement" shall mean one or more trademark assignment agreements for the purposes of recordation with the U.S. Patent and Trademark Office to be entered into by Sellers and Buyer concurrently with the Closing in a form mutually agreed to by the Parties.

"WARN Act" shall mean the Worker Adjustment and Retraining Notification Act of 1988 and any similar Law, including any other Law of any jurisdiction relating to plant closings or mass layoffs.

"Willful Breach" shall mean, with respect to a Party, a willful and deliberate act or a willful and deliberate failure to act, in each case that is the consequence of an act or omission by such Party that knows that the taking of such action or failure to take such action would or would reasonably be expected to cause a material breach of this Agreement.

"Worldwide Copyright Assignment Agreement" shall mean one or more worldwide copyright assignment and assumption agreements to be entered into by Sellers and Buyer concurrently with the Closing in a form mutually agreed to by the Parties.

"Worldwide Trademark Assignment Agreement" shall mean one or more worldwide trademark assignment and assumption agreements to be entered into by Sellers and Buyer concurrently with the Closing in a form mutually agreed to by the Parties.

"Zeavion License Agreement" shall mean that certain License and Assignment Agreement, dated as of July 15, 2016, by and among Gemstone (as successor-in-interest to The Gymboree Corporation), Gym-Mark, Inc. and Zeavion Holding Pte. Ltd.

1.2 Interpretation.

(a) Whenever the words "include," "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation."

(b) Words denoting any gender shall include all genders. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(c) A reference to any Party to this Agreement or any other agreement or document shall include such Party's successors and permitted assigns.

(d) A reference to any legislation or to any provision of any legislation shall include any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(e) All references to "$" and dollars shall be deemed to refer to United States currency.

(f) All references to any financial or accounting terms shall be defined in accordance with GAAP.

(g) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Disclosure Schedule and exhibit references are to this Agreement unless otherwise specified. All article, section, paragraph, schedule and exhibit references used in this Agreement are to articles, sections and paragraphs of, and schedules and exhibits to, this Agreement unless otherwise specified.

(h) The meanings given to terms defined herein shall be equally applicable to both singular and plural forms of such terms.

(i) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day. All references herein to time are references to New York City time, unless otherwise specified herein.

(j) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

(k) A reference to any agreement or document (including a reference to this Agreement) is to the agreement or document as amended or supplemented, except to the extent prohibited by this Agreement or that other agreement or document.

(l) Exhibits, Schedules and Annexes to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

ARTICLE 2
TRANSFER OF ASSETS AND ASSUMPTION OF LIABILITIES

2.1 Assets to be Acquired. Subject to the entry of the Sale Order, and the terms and conditions of this Agreement and the Sale Order, at the Closing (or, with respect to the Specified Domain Names, at the Subsequent Closing), Sellers shall sell, convey, assign, transfer and deliver to Buyer (or one or more Persons (including any Affiliates of Buyer), as designated by Buyer in writing to Gemstone prior to the Sale Hearing (each, a "Designated Purchaser"), which such writing shall indicate which Acquired Asset shall be purchased, acquired and accepted by each such Person), and Buyer or Designated Purchasers, as applicable, shall purchase, acquire and accept, all of the right, title and interest, free and clear of all Liens (other than Liens included in the Assumed Liabilities and Permitted Liens or as otherwise set forth in the Sale Order), of Sellers in each and all of the Acquired Assets. "Acquired Assets" shall mean all properties, assets, interests and rights of every nature, tangible and intangible, of Sellers, real, intangible or personal, now existing or hereafter acquired, whether or not reflected on the books or financial statements of Sellers as the same shall exist on the Closing Date (or, with respect to the Specified Domain Names, on the Subsequent Closing Date), in, to or under the following property and assets (other than the Excluded Assets):

(a) subject to Section 6.16:

(i) the copyright registrations set forth in Schedule 2.1(a)(i);

(ii) the internet domain name registrations and social media accounts set forth in Schedule 2.1(a)(ii) as well as all content, graphics, literary, audiovisual and artistic works displayed on the websites and social media sites and all copyrights and waivers of moral rights therein, including the right to sue and collect for past infringement of copyrights;

(iii) [Reserved];

(iv) Sellers' Trademark applications and registrations worldwide for "GYMBOREE" and "CRAZY 8" (for all languages and whether translated, transliterated or phoneticized) and any derivation thereof, including the applications and registrations set forth in Schedule 2.1(a)(iv) (the "Transferred Trademarks"), including the historical trademark files and any common law rights available anywhere in the world that are the subject of such applications and registrations, together with all goodwill associated therewith, including the right to sue and collect for past infringement, and all common law rights to the trademarks that are the subject of such Transferred Trademarks;

(v) any and all of Sellers' right, title and interest to the names "Crazy 8" and "Gymboree" (for all languages and whether translated, transliterated or phoneticized) and any derivation thereof, together with all goodwill associated therewith, including the right to sue and

collect for past infringement, and all common law rights to such names (the Intellectual Property in clauses (i) through (v) of this Section 2.1(a), collectively, the "Transferred Intellectual Property");

(b) all goodwill associated with the Acquired Assets and the Assumed Liabilities (excluding, for the avoidance of doubt, any and all goodwill to the extent associated with the Excluded Assets or the Excluded Liabilities);

(c) except as set forth in Section2.2(c) and Section2.2(e), and subject to the right of Sellers to retain copies (at their expense and subject to Section 6.17 and only to the extent and for the purposes expressly set forth in Section 2.2(c) and Section 2.2(e)), all Acquired Business Information in the possession or reasonable control of any Seller and whether in hard or electronic format;

(d) those leases and other Contracts (together with all of Sellers' deposits hereunder) entered into by any Seller and relating primarily or exclusively to the Transferred Intellectual Property listed on Schedule 2.1(d) (collectively, the "Assumed Contracts");

(e) all Claims of any Seller (including for royalties, fees or other income, past, present or future infringement, misappropriation or violation of, any of the Transferred Intellectual Property) to the extent arising from or relating to or in connection with the Acquired Assets or the Assumed Liabilities (regardless of whether or not asserted by any Seller), all of the proceeds from the foregoing which are accrued and unpaid as of the Closing (or, with respect to the Specified Domain Names, as of the Subsequent Closing), all rights of indemnity, warranty rights, guaranties received from vendors, suppliers or manufacturers, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery possessed by any Seller against other Persons and the prosecution files of Sellers related thereto, in each case, to the extent related to the Acquired Assets or the Assumed Liabilities (regardless of whether such rights are currently exercisable);

(f) all customer data, information, analysis and modelling derived from customer purchase and transaction files and branded loyalty promotion programs and other similar information related to customer purchases and transactions, including personal information (such as name, address, telephone number, e-mail address, website and any other database information), customer consents and opt-in/opt-outs, product hierarchy, segmentation (life cycle), customer lifetime value, predictive modeling scores and models used, loyalty information and data, private label programs (including credit card) information and data, offers, coupons and discount information and data, and customer purchase and transaction history at a transaction level (including dollar amounts, dates, and items purchased, but excluding from the foregoing any credit card numbers or related customer payment source, social security numbers, or other information to the extent prohibited by Law for transfer hereunder) relating to customers of, or collected through or used in the operation of (i) the Business, (ii) the E-Commerce Platform or any similar e-commerce platform owned, operated or controlled by Sellers, (iii) any catalog sales, other online or print mailing or similar distribution channels, (iv) partner e-commerce platforms or retail stores, (v) the Gemstone and Coral Brick and Mortar Business or (vi) any customer lists in the possession or reasonable control of the Sellers, except with respect to clauses (ii), (iii), (iv) and (vi) of this section, those relating primarily or exclusively to the Jewel Business (collectively, the "Customer Data");

(g) all Permits relating primarily or exclusively to the Acquired Assets, but only if and to the extent that such Permits are transferable by the applicable Seller to Buyer or Designated Purchaser, as the case may be, by assignment or otherwise (including upon request or application to a Governmental Entity or any third party, or which will pass to Buyer or Designated Purchaser, as the case may be, as successor in title to the Acquired Assets by operation of Law) (the "Transferable Permits");

(h) deposits and prepaid expenses of any Seller relating to any of the Assumed Contracts; and

(i) all of the Sellers' right, title and interest in and to the Gym-IPCO Interests.

2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Acquired Assets do not include, and in no event shall Sellers be deemed to sell, transfer, assign, convey or deliver and Sellers shall retain, all right, title and interest to, Sellers' right, title or interest in or to any of the following properties, interests, rights and assets of Sellers (collectively, the "Excluded Assets"):

(a) each Seller's rights under this Agreement or any of the other Transaction Documents (including the right to receive the Purchase Price);

(b) all of Sellers' or any of their respective Affiliates' certificates of incorporation and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates and other documents relating to the organization, maintenance and existence of any Seller or any of its Affiliates as a corporation, limited liability company or other entity;

(c) all books and records related to Taxes paid or payable by any Seller or any of its Affiliates; provided that Buyer shall be entitled to copies of Tax Returns in respect of Property Taxes relating primarily or exclusively to the Acquired Assets or copies of any portions of such documents relating primarily or exclusively to the Acquired Assets;

(d) other than the Gym-IPCO LLC Interests, all shares of capital stock or other equity interests of any Seller or any of its Affiliates or securities convertible into or exchangeable or exercisable for shares of capital stock or other equity interests of any Seller or any of its Affiliates, including the entities listed on Schedule 2.2(d);

(e) any (i) personnel records pertaining to any employees of Sellers or any of their respective Affiliates (ii) copies of any book, record, literature, list and any other written or recorded information constituting Acquired Business Information that has been provided to Buyer and to which Sellers and their respective Affiliates in good faith determine they are reasonably likely to need access for *bona fide* business, tax or legal purposes (iii) Excluded Information or (iv) other books and records, in either case, that Sellers and their respective Affiliates are required by Law to retain, including Tax Returns, taxpayer and other identification numbers, financial statements and corporate or other entity filings; provided that, to the extent permitted by applicable Law, Buyer shall have the right to obtain copies of any portions of such retained books and records to the extent that such portions relate to the any Acquired Asset or are otherwise necessary for Buyer to comply with applicable Law;

(f) (i) all assets, properties, interests and other rights of every nature in respect of the Benefit Plans and any other compensation or benefit plans, programs, arrangements, or agreements of Sellers or any of their Subsidiaries, in each case including all associated funding media, assets, reserves, credits and service agreements, and all documents created, filed or maintained in connection therewith, together with any applicable insurance policies related thereto, and (ii) all employment, personnel and compensation records relating to any current or former employee of any Seller or any Subsidiary of any Seller;

(g) all Permits and pending applications therefor to the extent not relating primarily or exclusively to the Acquired Assets;

(h) all Claims that Sellers or any of their respective Affiliates may have against any third Person with respect to any Excluded Assets or Excluded Liabilities;

(i) all cash and cash equivalents, securities, security entitlements, instruments and other investments of Sellers and all bank accounts and security accounts, including any cash collateral that is collateralizing any letters of credit;

(j) all Excluded Contracts and all prepaid expenses related thereto;

(k) all insurance policies and rights to proceeds thereof (and Buyer acknowledges that, as of the Closing, the Acquired Assets shall cease to be insured by any insurance policies of any Seller or any of their Subsidiaries);

(l) all Inventory, including Inventory (i) located at the distribution center or any retail store locations or designated for use in the Jewel Brick and Mortar Business or the Gemstone and Coral Brick and Mortar Business, and/or (ii) owned by any Seller but remains in the possession or control of a third party or which is undelivered or in transit;

(m) any documents and agreements relating to the Chapter 11 Cases or to the sale or other disposition of the Business, the Acquired Assets or any other asset of any Seller or any of its Affiliates other than those to be delivered to Buyer in accordance with this Agreement;

(n) all prepayments, good faith and other bid deposits submitted by any third party under the terms of the Bidding Procedures Order;

(o) all Avoidance Actions and all other avoidance actions, including fraud, self-dealing, fraudulent transfer, or similar claims against any officer or director of any Seller or any of its Affiliates;

(p) any and all of Sellers' right, title and interest to the name "Janie and Jack" or any derivation thereof;

(q) any software and mobile applications (and copyrights therein) and licenses, maintenance service agreements, current statements of work and any amendments thereto, customizations, custom codes and extensions related thereto (whether done by any Seller or a third party on behalf of any Seller) and all master service agreements related to information technology services, in each case, used in the operation of the Business;

(r) the E-Commerce Platform, including all information technology hardware, software and data collection systems used in connection therewith that are owned, leased or licensed by Sellers or any of their Subsidiaries and all copyright rights therein (other than Acquired Assets);

(s) all right, title and leasehold interest of Sellers in any of Seller's Real Property, together with all right, title and leasehold interest of Sellers in the buildings, structures, fixtures and improvements erected thereon, including the Facilities, and all rights, privileges, easements, licenses and other appurtenances relating thereto (collectively, the "Leased Real Property");

(t) all (i) Sellers' owned equipment, machinery, furniture, spare parts, fixtures and improvements Relating to the Business (the "Owned Equipment"), (ii) rights of Sellers to the equipment, machinery, furniture, spare parts, fixtures and improvements which are leased pursuant to a contract (collectively with the Owned Equipment, the "Equipment"), and (iii) rights of Sellers to the warranties, express or implied, and licenses received from manufacturers and sellers of the Equipment; and

(u) all assets, properties, interests and rights of any Seller used primarily or exclusively in the operation or conduct of the Business as conducted as of the date hereof, except for any such assets, properties, interests and rights described or identified in Section 2.1 or on Schedule 2.1.

2.3 Liabilities to be Assumed by Buyer. Subject to the terms and conditions of this Agreement, at the Closing (or, with respect to the Specified Domain Names, at the Subsequent Closing), Sellers shall assign to Buyer or Designated Purchasers, as applicable, and Buyer or Designated Purchasers, as applicable, shall assume from Sellers and pay when due, perform and discharge, in due course, without duplication, each of the Assumed Liabilities. "Assumed Liabilities" shall mean solely the following Liabilities:

(a) all Liabilities of Sellers under each of the Assumed Contracts that become due from and after the Closing Date;

(b) all Cure Costs (other than any Cure Costs for the assumption and assignment of the Zeavion License Agreement, it being understood that the cash required for such Cure Costs will be $0);

(c) all Transfer Taxes related to the sale, transfer or assignment of the Acquired Assets; and

(d) all Liabilities arising from or after the Closing (or, with respect to the Specified Domain Names, from and after the Subsequent Closing) with respect to or relating to the ownership or operation of any of the Acquired Assets by Buyer and/or any Designated Purchaser.

Notwithstanding the foregoing and for the avoidance of doubt, Assumed Liabilities shall not include any Liability that constitutes an "Excluded Liability" or any Liability relating to or arising out of any violation of Law by, or any Claim against, any Seller or any breach, default or violation by any Seller of or under any Assumed Contracts, other than the Cure Costs.

2.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, Buyer shall not and does not assume, and shall be deemed not to have assumed and shall not be obligated to pay, perform, discharge or in any other manner be liable or responsible for any Liabilities of Sellers, whether existing on the Closing Date or arising thereafter, relating to or arising out of any of the following (collectively, the "Excluded Liabilities"):

(a) all costs and expenses incurred or to be incurred by Sellers in connection with this Agreement and the consummation of the Transactions;

(b) all Liabilities (i) related to any current or former employee of any Seller or of any Subsidiary of any Seller (including under the WARN Act) and (ii) under any Benefit Plan (including all assets, trusts, insurance policies and administration service contracts related thereto);

(c) all Liabilities for any and all Taxes of Sellers (including any Liability of Sellers for the Taxes of any other Person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee or successor, by Contract or otherwise) except for Taxes for which Buyer or Designated Purchaser is liable pursuant to Section 2.3(c) and/or Section 2.3(d);

(d) all Liabilities arising out of, relating to or with respect to any and all employees, and contractors of Sellers or any of their Subsidiaries or Affiliates;

(e) all Liabilities to any broker, finder or agent or similar intermediary for any broker's fee, finders' fee or similar fee or commission relating to the Transactions contemplated by this Agreement for which any Seller or its Affiliates are responsible;

(f) all Liabilities, or corrective or remedial obligations with respect to Facilities or operation of the Business (including any related offsite disposal locations) which arises under or relates to any Environmental Laws (including without limitation any relating to exposure to Hazardous Materials);

(g) all Liabilities arising out of, concerning, in connection with, or relating to the Real Property, the Leased Real Property, the Retained Business or the Proceedings listed on Schedule 4.6; and

(h) for the avoidance of doubt, all Liabilities arising out of, concerning, in connection with, or relating to the ownership or operation of the Specified Domain Names prior to the Subsequent Closing:

provided that in the event of any conflict between Section 2.3 and this Section 2.4, Section 2.4 will control.

2.5 Reserved.

2.6 Non-Assignment of Assumed Contracts.

(a) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Assumed Contract which, after giving effect to the provisions of Section 365 of the Bankruptcy Code, is not assignable or transferable without the consent of any Person, other than the Sellers, any of their respective Affiliates or Buyer, to the extent that such consent shall not have been given prior to the Closing; provided, however, that (i) the Sellers shall use, whether before or after the Closing, its commercially reasonable efforts to obtain all necessary consents (each, a "Necessary Consent") to the assignment and transfer thereof, it being understood that, to the extent the foregoing shall require any action by the Sellers that would, or would continue to, have an adverse effect on the business of Buyer or any of its Affiliates after the Closing, such action shall require the prior written consent of Buyer, and (ii) in the event that any Assumed Contract is deemed not to be assigned pursuant to clause (i) of this Section 2.6(a), the Sellers shall (A) use commercially reasonable efforts to obtain such necessary consents as promptly as practicable after the Closing and (B) cooperate in good faith in any lawful and commercially reasonable arrangement reasonably proposed by Buyer, including subcontracting, licensing or sublicensing to Buyer any or all of any Seller's rights and obligations with respect to any such Assumed Contract, under which Buyer shall obtain (without infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits under such Assumed Contract with respect to which such Necessary Consent has not been obtained. Upon satisfying any requisite consent requirement applicable to such Assumed Contract after the Closing, such Assumed Contract shall promptly be transferred and assigned to Buyer in accordance with the terms of this Agreement. These commercially reasonable efforts shall not require any material payment or other material consideration from the Sellers or the Buyer (other than the Cure Costs, which shall be the responsibility of Buyer), and any such consent shall contain terms and conditions reasonably acceptable to the Parties. For the avoidance of doubt, the term "material" in the prior sentence means material in the context of the relevant Assumed Contract.

(b) Subject to Section 2.6(a), if after the Closing (i) Buyer or any of its Affiliates holds any Excluded Assets or Excluded Liabilities or (ii) any Seller or any of their Affiliates holds any Acquired Assets or Assumed Liabilities, Buyer or the applicable Seller, will promptly transfer (or cause to be transferred) such assets or assume (or cause to be assumed) such Liabilities to or from (as the case may be) the other party. Prior to any such transfer, the party receiving or possessing any such asset will hold it in trust for such other party.

2.7 Assumption and Assignment of Executory Contracts. Sellers shall provide timely and proper written notice of the motion seeking entry of the Sale Order to all parties to any executory Contracts to which any Seller is a party that are Assumed Contracts and take all other actions necessary to cause such Contracts to be assumed by Sellers and assigned to Buyer pursuant to Section 365 of the Bankruptcy Code, as applicable, to the extent that such Contracts are Assumed Contracts at the Final Bid Deadline (as defined in the Bidding Procedures). At the Closing, Sellers shall, pursuant to the Sale Order and the Assignment and Assumption Agreement, assume and assign to Buyer (the consideration for which is included in the Purchase Price), all Assumed Contracts that may be assigned by any such Seller to Buyer pursuant to Sections 363 and 365 of the Bankruptcy Code, as applicable, subject to provision by Buyer of adequate assurance as may be required under Section 365 of the Bankruptcy Code and payment by Buyer of the Cure Costs in respect of Assumed Contracts pursuant to and in accordance with Section 365 of the Bankruptcy Code, as applicable, and the Sale Order. At the Closing, Buyer shall assume, and thereafter in due course and in accordance with its respective terms pay, fully satisfy, discharge and perform all of the obligations under each Assumed Contract pursuant to Section 365 of the Bankruptcy Code, as applicable.

ARTICLE 3
CLOSING; PURCHASE PRICE

3.1 Closing; Transfer of Possession; Certain Deliveries.

(a) The consummation of the Transactions (other than the sale, conveyance, assignment, transfer and delivery to Buyer of the Specified Domain Names) (the "Closing") shall take place on the second Business Day after the satisfaction of all of the conditions set forth in Article 7 (or the waiver thereof by the Party entitled to waive that condition) or on such other date as the Parties hereto shall mutually agree. The Closing shall be held at the offices of Milbank LLP, 55 Hudson Yards, New York NY 10001, at 10:00 a.m., local time, unless the Parties hereto otherwise agree. The actual date of the Closing is herein called the "Closing Date". The consummation of the sale, conveyance, assignment, transfer and delivery to Buyer of the Specified Domain Names (the "Subsequent Closing") shall take place on the earlier of (i) the date on which the Sale (as defined in the Liquidation Agreement) has terminated and the Agent is no longer using the Specified Domain Names in connection with the transactions contemplated by the Liquidation Agreement and (ii) April 30, 2019, via the electronic exchange of documents, unless the Parties hereto otherwise agree. The actual date of the Subsequent Closing is herein called the "Subsequent Closing Date".

(b) At the Closing, Sellers shall deliver to Buyer:

(i) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Gemstone certifying that the conditions set forth in Section 7.1(a) and Section 7.1(b) have been satisfied;

(ii) an electronic copy of the information required under Section 2.1(a)(ii), along with the administrative and technical contact(s) and other information necessary for accessing the registration, operation and use of the domain names and social media sites referred to in Section 2.1(a)(ii), including any applicable login identification credentials and passwords therefor;

(iii) an electronic and physical copy of the entirety of the PostgreSQL database(s) of the information and data required under Section 2.1(c) and Section 2.1(f) (Customer Data); ETL extract(s) of such PostgreSQL database(s) to provide Buyer all relevant access, extraction, transform, load thereto; and related analysis tools, models and credentials, except with respect to e-mails, which Buyer may retrieve from Sellers at its sole cost and expense upon reasonable prior request and in a commercially reasonable manner (it being understood that Sellers shall cooperate and work with Buyer in good faith in connection with any such request);

(iv) a duly executed bill of sale, in a form mutually agreed to by the Parties, transferring the Acquired Assets to Buyer; and

(v) the following Transaction Documents, duly executed by Sellers:

(I) Assignment and Assumption Agreement;

(II) U.S. Trademark Assignment Agreement;

(III) PRC Trademark Assignment Agreement;

(IV) Worldwide Trademark Assignment Agreement;

(V) Worldwide Copyright Assignment Agreement;

(VI) Power of Attorney Agreement; and

(VII) Domain Name Assignment Agreement (other than with respect to the Specified Domain Names).

(c) At the Closing, Buyer shall deliver to Sellers:

(i) the Purchase Price in accordance with the provisions of Section 3.2 by wire transfer of immediately available funds to an account or accounts that Sellers shall have notified Buyer of at least two (2) Business Days prior to the Closing Date;

(ii) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Buyer certifying that the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied; and

(iii) the following Transaction Documents, duly executed by Buyer:

(I) Assignment and Assumption Agreement;

(II) U.S. Trademark Assignment Agreement;

(III) PRC Trademark Assignment Agreement;

(IV) Worldwide Trademark Assignment Agreement;

(V) Worldwide Copyright Assignment Agreement; and

(VI) Domain Name Assignment Agreement (other than with respect to the Specified Domain Names).

(d) At the Subsequent Closing:

(i) Sellers shall deliver to Buyer a duly executed Domain Name Assignment Agreement (solely with respect to the Specified Domain Names); and

(ii) Buyer shall deliver to Sellers a duly executed Domain Name Assignment Agreement (solely with respect to the Specified Domain Names).

3.2 Consideration.

(a) Purchase Price. The aggregate consideration for the Acquired Assets (the "Purchase Price") shall be (i) $76,000,000 in cash (the "Base Purchase Price"), and (ii) the assumption of the Assumed Liabilities.

3.3 Allocation of Purchase Price. (i) The sum of the Purchase Price and the amount of the Assumed Liabilities (to the extent properly taken into account under the Code) shall be allocated between Sellers and (ii) the amount allocated to the Acquired Assets sold by each such Seller shall be further allocated among such Acquired Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (the "Allocation"). The Allocation shall be delivered by Buyer to Sellers within ninety (90) days after the Closing. Sellers will have the right to raise reasonable objections to the Allocation within thirty (30) days after Buyer's delivery thereof, in which event Buyer and Sellers will negotiate in good faith to resolve such dispute. If Buyer and Sellers cannot resolve such dispute within fifteen (15) days after Sellers notify Buyer of such objections, such dispute with respect to the Allocation shall be resolved promptly by the Neutral Accountant, the costs of which shall be shared in equal amounts by Buyer, on the one hand, and Sellers, on the other hand. The decision of the Neutral Accountant in respect of the Allocation shall be final and binding upon Buyer and Sellers. Buyer and Sellers shall file all Tax Returns (including, but not limited to, Internal Revenue Service Form 8594) consistent with the Allocation absent a change in Law; provided, however, that nothing contained herein shall prevent Buyer or any Seller from settling any proposed deficiency or adjustment by any Tax Authority based upon or arising out of the

Allocation, and neither Buyer nor any Seller shall be required to litigate before any court any proposed deficiency or adjustment by any Tax Authority challenging such Allocation. Buyer and Sellers shall promptly notify and provide the other with reasonable assistance in the event of an examination, audit, or other proceeding relating to Taxes regarding the Allocation of the Purchase Price and the amount of the Assumed Liabilities pursuant to this Section 3.3. Notwithstanding any other provisions of this Agreement, the foregoing agreement shall survive the Closing Date without limitation.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Disclosure Schedules, Sellers jointly and severally hereby represent and warrant to Buyer, as of the Agreement Date and as of the Closing, as follows:

4.1 Organization.

(a) Each Seller is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and has all requisite corporate power and authority to own, lease, develop and operate the Acquired Assets and to carry on the Business as now being conducted.

(b) Each Seller (i) is duly qualified or licensed to do business as a foreign corporation or limited liability company, as applicable, and is in good standing under the Laws of each jurisdiction where the nature of the property owned or leased by it or the nature of the Business makes such qualification or license necessary, except where any such failure to be so qualified or licensed, individually in the aggregate, would not result in a Sellers Material Adverse Effect, and (ii) pursuant to Sections 1107 and 1108 of the Bankruptcy Code and the Orders of the Bankruptcy Court, has all necessary corporate or limited liability company power and authority to own and operate its properties, to lease the property it operates under lease and to conduct the Business as debtor-in-possession.

4.2 Due Authorization, Execution and Delivery; Enforceability. Each Seller has all requisite corporate or limited liability company power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is (or will become at Closing) a party and to perform its obligations hereunder and thereunder (subject, in the case of the obligation to consummate the Transactions, to the entry of the Sale Order). The execution, delivery and performance by each of Sellers of this Agreement and the other Transaction Documents to which it is (or will become at Closing) a party and the consummation of the Transactions have been duly and validly authorized by all requisite corporate or limited liability company action, as applicable, on the part of each such Seller and no other corporate or limited liability company action, as applicable, on the part of each such Seller is necessary to authorize this Agreement and such other Transaction Documents and to consummate the Transactions (subject, in the case of the obligation to consummate the Transactions, to the entry of the Sale Order). This Agreement and the other Transaction Documents to which each of Sellers is (or will become at Closing) party have been (or will be) duly and validly executed and delivered by each such Seller and (assuming the due authorization, execution and delivery by all parties hereto and thereto, other than such Seller) constitute (or will constitute) valid and binding obligations of each such Seller enforceable against each such Seller in accordance with their terms (subject, in the case of the obligation to consummate the Transactions, to the entry of the Sale Order).

4.3 Governmental Consents. No notice to, consent, approval or authorization of or designation, declaration or filing with any Governmental Entity is required by any Seller with respect to such Sellers' execution, delivery and performance of any Transaction Document to which it is (or will become at Closing) a party or the consummation of the Transactions, except (a) as may be required under the HSR Act, (b) the Sale Order having been entered by the Bankruptcy Court, (c) notices, filings and consents required in connection with the Chapter 11 Cases and (d) any consent, approval or authorization of or designation, declaration or filing with any Governmental Entity the failure of which to be made or obtained would not, individually or in the aggregate, be, or reasonably be expected to be, material to the Acquired Assets taken as a whole.

4.4 No Conflicts. Subject to the receipt of the Necessary Consents set forth on Schedule 4.4 and the Sale Order having been entered by the Bankruptcy Court, the execution, delivery and performance by such Seller of any Transaction Document to which such Seller is (or will become at Closing) a party, and the consummation of the Transactions, does not and will not (a) conflict with or result in any breach of any provision of its certificate of incorporation or bylaws or comparable governing documents, (b) without giving effect to Section 2.6, conflict with or result in the breach of the terms, conditions or provisions of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give rise to any right of termination, acceleration or cancellation of any right or obligation or to a loss of any benefit under any provision of any Assumed Contract, (c) result in a violation of any Law or Order applicable to it or (d) result in the creation or imposition of any Lien on any Acquired Asset other than Permitted Liens, except, in the case of clauses (b), (c) and/or (d), as would not, individually or in the aggregate, be, or reasonably be expected to be, material to the Acquired Assets, taken as a whole.

4.5 Title to Acquired Assets. Except for Permitted Liens, Sellers have good and valid title to the material Acquired Assets. No Subsidiaries or Affiliates of Gemstone, other than Sellers, hold any Acquired Assets.

4.6 Litigation; Orders. Except for the Chapter 11 Cases and any adversary proceedings or contested motions commenced in connection therewith, or as set forth on Schedule 4.6, (a) there is no Claim, Proceeding or Order pending, outstanding or, to any Seller's Knowledge, threatened against any Seller or any of their respective Affiliates (i) that would reasonably be expected to be material to the Acquired Assets or (ii) that seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the Transactions contemplated hereby and (b) as of the Agreement Date, there is no Proceeding by any Seller or any of their respective Affiliates pending, or which a Seller or any such Affiliate has commenced preparations to initiate, against any other Person relating to or affecting the Acquired Assets.

4.7 Reserved.

4.8 Reserved.

4.9 Taxes.

(a) There are no material Liens on any of the Acquired Assets that arose in connection with, or are attributable to, any Seller's failure to pay any Tax.

(b) Except as set forth on Schedule 4.9(b), there is no material dispute or claim concerning any Tax Liability of any Seller, with respect to the Business or the Acquired Assets, claimed, raised, or threatened by any Governmental Entity in writing.

(c) Except as set forth on Schedule 4.9(c), each Seller has timely filed all material U.S. federal, State and other Tax Returns that it was required to file under applicable Law with respect to the Business or the Acquired Assets, and (i) all such Tax Returns are true, correct, and complete in all material respects, and (ii) all material Taxes with respect to the Business or the Acquired Assets due (whether or not shown on such Tax Returns) have been fully and timely paid (other than any Taxes not due as of the date of the filing of the Chapter 11 Cases as to which subsequent payment was prohibited by reason of the Chapter 11 Cases and any Taxes that are the subject of a Permitted Lien).

4.10 Compliance with Laws; Permits. The Business has been operated in compliance with all applicable Laws, and no Seller has received any written notice of any alleged material violation of applicable Law from any Governmental Entity or other Person Relating to the Business, in either case except as would not, individually or in the aggregate be, or would reasonably be expected to be, material to the Acquired Assets taken as a whole. Sellers hold all material Permits necessary or required pursuant to applicable Law for the operation of the Business as presently conducted and for the ownership, lease or operation of the Business and the construction of any material improvements currently under construction on the Leased Real Property. To Sellers' Knowledge, as of the date hereof, (a) no Seller has received written notice of any material default under any Permit Relating to the Business and (b) no violations exist in respect of such Permits, except for such non-compliance and such facts, conditions or circumstances, the existence of which would not, individually or in the aggregate, be, or would reasonably be expected to be, material to the Acquired Assets taken as a whole.

4.11 Contracts. Schedule 2.1(d) contains a true, correct and complete list of all Contracts that are necessary for the transfer, assignment and use of the Transferred Intellectual Property. Subject to receipt of the Necessary Consents and compliance with Section 6.10, (i) subject to the entry of the Sale Order, each of the Assumed Contracts is in full force and effect and constitutes a valid and binding obligation of the applicable Seller, and, to the Knowledge of Sellers, each other party thereto, and (ii) no Seller is in breach or default in any material respect under any of the Assumed Contracts and, to the Knowledge of Sellers, the other parties to such Contracts are not in breach or default in any material respect thereunder (and in each such case no event exists that with the passage of time or the giving of notice would constitute such material breach or default in any material respect, result in a loss of material rights, result in the payment of any damages or penalties or result in the creation of any Liens thereunder or pursuant thereto other than Permitted Liens). To Sellers' Knowledge, none of the Assumed Contracts have been cancelled or otherwise terminated by Sellers, and Sellers have not delivered any written notice to any counterparty to such Assumed Contract regarding any such cancellation or termination by Sellers.

4.12 Insurance Claims. Schedule 4.12 contains a true, correct and complete list of all insurances policies as of the Agreement Date (including the names and insurers and policy numbers) that are owned by any Seller or name any Seller as an insured or loss payee and that are relating primarily or exclusively to the Acquired Assets and a description of all material pending claims under each of such insurance policies pertaining to the Acquired Assets. Sellers have within the past three (3) years reported all known material Claims or incidents to the respective insurers that have issued current and prior insurance policies insuring the Business to the extent that any such Claims or incidents would reasonably be expected to create a covered event under the terms and conditions of such policies and Sellers were required to report them pursuant to the terms of the policies.

4.13 Intellectual Property.

(a) Schedule 4.13(a) sets forth a true, correct and complete list of all material Intellectual Property that is, as of the Agreement Date, issued, registered, or subject to an application for registration that is Transferred Intellectual Property (the "Registered IP").

(b) Sellers own all Registered IP and all Transferred Intellectual Property free and clear of all Liens (other than Permitted Liens), and such Registered IP remains pending or in full force and effect and has not expired or been cancelled.

(c) To the Knowledge of Sellers, (i) the Registered IP is valid and enforceable except as enforceability may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability and (ii) the past three (3) years of use and current use by Sellers of the Transferred Intellectual Property owned by or licensed to Sellers does not infringe or otherwise violate any Intellectual Property of any other Person, except as would not, individually or in the aggregate, be, or reasonably be expected to be, material to the Transferred Intellectual Property. Except as provided for in Schedule 4.13(c), there is no Proceeding pending or, to the Knowledge of Sellers, threatened, alleging any such infringement or violation of any Seller's rights in or to the Registered IP or other Transferred Intellectual Property owned by Sellers, except as would not, individually or in the aggregate, be, or reasonably be expected to be, material to the Transferred Intellectual Property. Except as provided for in Schedule 4.13(c), to the Knowledge of Sellers, no Person is infringing or otherwise violating the Registered IP or other Transferred Intellectual Property owned by Sellers.

4.14 Anti-Corruption and Sanctions.

(a) Each Seller and each of such Seller's Subsidiaries, and, to the Knowledge of Sellers, all of their respective directors, officers, agents or employees, has been for the past five (5) years and currently is in compliance in all material respects with, Anti-Corruption Laws and Sanctions, Anti-Money Laundering Laws and Export Control and Customs Laws.

(b) None of Sellers or any of their Subsidiaries, or, to the Knowledge of Sellers, any directors, officers, agents or employees or Affiliates of Sellers or any of their Subsidiaries, or any other Person acting on their behalf has, (i) directly or indirectly, engaged in any Anti-Corruption Prohibited Activity, (ii) directly or indirectly engaged in any transaction or other business with a Restricted Party in violation of applicable Sanctions, or (iii) been or is the subject of any investigation by any Governmental Entity concerning compliance with Anti-Corruption Laws, Anti-Money Laundering Laws, Export Control and Customs Laws, or Sanctions. None of Sellers or any of their Subsidiaries, nor to the Knowledge of Sellers any of their respective officers, directors, employees, Affiliates or agents acting on their behalf, is a Restricted Party.

4.15 Data Privacy. In connection with its collection, storage, transfer (including transfer across national borders) and/or use of any personally identifiable information from any individuals, including any customers, prospective customers, employees and/or other third parties (collectively "Personal Information"), to the Knowledge of Sellers, each Seller is and, during the last six (6) years, has been in compliance with all applicable Laws in all relevant jurisdictions except as would not, individually or in the aggregate, be, or would reasonably be expected to be, material to the Acquired Assets taken as a whole and has obtained all necessary rights from third parties and complied in all material respects with all other requirements under applicable Laws to enable the collection, storage, transfer and/or use of such Personal Information for the purposes of the Business (as is customary in the retail and e-commerce industries) following Closing. Each Seller has complied in all material respects with the opt-out provisions of its privacy policies and any and all requests of customers to opt out of receipt of marketing messages. Each Seller has commercially reasonable physical, technical, organizational and administrative security measures in place to protect all Personal Information collected by it or on its behalf from and against unauthorized access, use and/or disclosure in accordance with applicable Laws and

to the Knowledge of the Sellers there have been no security incidents which have resulted in the accidental or unlawful destruction, loss, alteration or unauthorized disclosure of or access to Personal Information during the last six (6) years.

4.16 Gym-IPCO LLC.

(a) Sellers have provided Buyer with a true, correct and complete copy of the Gym-IPCO LLC Agreement.

(b) Gym-IPCO is fully funded and there are no outstanding obligations of any Seller to make any Capital Contributions, fund any Expenses or pay any Expense Loan thereunder (each as defined in the Gym-IPCO LLC Agreement).

(c) Sellers own beneficially and of record all of the Gym-IPCO Interests, free and clear of all Liens, and Sellers have full right, power and authority to transfer such Gym-IPCO Interests to Buyer, free and clear of all Liens, in each case other than (i) Liens arising pursuant to applicable securities Laws, (ii) Permitted Liens and (iii) Liens expressly set forth in the Gym-IPCO LLC Agreement.

4.17 Exclusive Representations and Warranties. Except for the representations and warranties contained in this Article 4 (as modified by the Disclosure Schedules) and the other Transaction Documents, none of Sellers nor their respective Affiliates, nor any of their respective Representatives, makes or has made any other representation or warranty on behalf of Sellers or otherwise in respect of Sellers, the Acquired Assets or the Business. Except for the representations and warranties contained in this Article 4 (as modified by the Disclosure Schedules) and the other Transaction Documents, each Seller (a) expressly disclaims and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Acquired Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials) and (b) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Buyer or its Affiliates or Representatives (including any opinion, information, projection, or advice that may have been or may be provided to Buyer by any Representative of Sellers or any of their respective Affiliates). Sellers make no representations or warranties to Buyer regarding the probable success or profitability of the Acquired Assets. The disclosure of any matter or item in any schedule hereto will not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter would result in a Sellers Material Adverse Effect.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represent and warrant to Sellers, as of the Agreement Date and as of the Closing, except as set forth on the Disclosure Schedules, as follows:

5.1 Organization. Buyer is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization. Buyer has all necessary corporate power and authority to own and operate its properties, to lease the property it operates under lease and to conduct its business.

5.2 Due Authorization, Execution and Delivery; Enforceability. Buyer has all requisite corporate power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is (or will become at Closing) a party and to perform its obligations hereunder and thereunder (subject, in the case of the obligation to consummate the Transactions, to the entry of the Sale Order). The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is (or will become at Closing) a party and the consummation of the Transactions have been duly and validly authorized by all requisite corporate action on the part of Buyer and no other corporate action on the part of Buyer is necessary to authorize this Agreement and such other Transaction Documents and to consummate the Transactions (subject, in the case of the obligation to consummate the Transactions, to the entry of the Sale Order). This Agreement and the other Transaction Documents to which Buyer is (or will become at Closing) party have been (or will be) duly and validly executed and delivered by Buyer and (assuming the due authorization, execution and delivery by all parties hereto and thereto, other than Buyer) constitute (or will constitute) valid and binding obligations of Buyer enforceable against Buyer in accordance with their terms (subject, in the case of the obligation to consummate the Transactions, to the entry of the Sale Order), in each case except as enforceability may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

5.3 Governmental Approvals. No notice to, consent, approval or authorization of or designation, declaration or filing with any Governmental Entity is required by Buyer with respect to Buyer's execution and delivery of any Transaction Document to which it is (or will become at Closing) a party or the consummation of the Transactions, except (a) as may be required under the HSR Act, (b) the Sale Order having been entered by the Bankruptcy Court, and (c) any consent, approval or authorization of or designation, declaration or filing with any Governmental Entity the failure of which to be made or obtained would not, individually or in the aggregate, be reasonably expected to result in a Buyer Material Adverse Effect.

5.4 No Conflicts. The execution, delivery and performance by Buyer of any Transaction Document to which Buyer is (or will become at Closing) a party and the consummation of the Transactions, does not and will not (a) conflict with or result in any breach of any provision of its certificate of incorporation or bylaws or comparable governing documents, (b) conflict with or result in the breach of the terms, conditions or provisions of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give rise to any right of termination, acceleration or cancellation under, any material Contract of Buyer, or (c) result in a violation of any Law or Order applicable to it, except, in the case of clauses (b) and (c), as would not, individually or in the aggregate, result in a Buyer Material Adverse Effect.

5.5 Availability of Funds and Financial Capability. To the extent that any portion of the Purchase Price is payable in cash, Buyer, as of the Closing, will have sufficient funds available to it to pay the cash portion of the Purchase Price on the Closing Date and to enable Buyer to perform all of its obligations under this Agreement. Immediately after giving effect to the consummation of the Transactions: (a) the fair saleable value (determined on a going concern basis) of the assets of Buyer will be greater than the total amount of its Liabilities; (b) Buyer will be solvent and able to pay its respective debts and obligations in the Ordinary Course of Business as they become due; (c) no transfer of property is being made and no obligation is being incurred in connection with the Transactions with the intent to hinder, delay or defraud either present or future creditors of Buyer in connection with the Transactions; (d) Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured; and (e) Buyer will have adequate capital to carry on all businesses in which it is about to engage.

5.6 Adequate Assurances Regarding Executory Contracts. Buyer (or such of Buyer's Affiliates which will be assuming any Assumed Contract) is and will be capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts.

5.7 Condition and Location of Acquired Assets. Except as otherwise expressly set forth in this Agreement, Buyer understands and agrees that the Acquired Assets are furnished "as is", "where is" and, subject only to the representations and warranties contained in Article 4, with all faults, limitations and defects (hidden and apparent) and, subject to the representations and warranties contained in Article 4, without any other representation or warranty of any nature whatsoever and without any guarantee or warranty (whether express or implied) as to their title, quality, merchantability or their fitness for Buyer's intended use or a particular purpose or any use or purpose whatsoever.

5.8 Exclusive Representations and Warranties. Except for the representations and warranties contained in this Article 5 (as modified by the Disclosure Schedules), none of Buyer, its Affiliates, nor any of their respective Representatives, makes or has made any other representation or warranty on behalf of Buyer. Except for the representations and warranties contained in this Article 5 (as modified by the Disclosure Schedules), Buyer disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Sellers or their respective Affiliates or Representatives (including any opinion, information, projection, or advice that may have been or may be provided to Sellers by any Representative of Buyer or any of their respective Affiliates). The disclosure of any matter or item in any schedule hereto will not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter would result in a Buyer Material Adverse Effect.

5.9 No Other Representations or Warranties of Sellers; Disclaimers.

(a) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EXCEPT AS AND TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT AND IN THE TRANSACTION DOCUMENTS, BUYER ACKNOWLEDGES AND AFFIRMS THAT SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND DISCLAIM ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, STATEMENT OR INFORMATION MADE OR COMMUNICATED (ORALLY OR IN WRITING) TO BUYER (INCLUDING ANY OPINION, INFORMATION, OR ADVICE THAT MAY HAVE BEEN PROVIDED TO BUYER BY ANY RESPECTIVE AFFILIATE OR REPRESENTATIVE OF SELLERS OR BY ANY INVESTMENT BANK OR INVESTMENT BANKING FIRM, SELLERS' COUNSEL, OR ANY OTHER AGENT, CONSULTANT, OR REPRESENTATIVE OF SELLERS). OTHER THAN AS SET FORTH HEREIN OR IN THE OTHER TRANSACTION DOCUMENTS, BUYER FURTHER ACKNOWLEDGES AND AFFIRMS THAT SELLERS MAKE NO REPRESENTATION, COVENANT OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF ANY FILES, RECORDS OR DATA HERETOFORE OR HEREAFTER FURNISHED IN CONNECTION WITH THE ACQUIRED ASSETS (INCLUDING WITHOUT LIMITATION IN ANY CONFIDENTIAL INFORMATION STATEMENT OR MEMORANDUM, MANAGEMENT PRESENTATION, OR DOCUMENT MADE AVAILABLE IN A DATAROOM). OTHER THAN AS SET FORTH HEREIN OR IN THE OTHER TRANSACTION DOCUMENTS, ANY AND ALL SUCH FILES, RECORDS AND DATA FURNISHED BY SELLERS ARE PROVIDED AS A CONVENIENCE, AND ANY RELIANCE ON OR USE OF THE SAME SHALL BE AT BUYER'S SOLE RISK. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS SET FORTH IN THE TRANSACTION DOCUMENTS, BUYER FURTHER ACKNOWLEDGES AND AFFIRMS THAT SELLERS EXPRESSLY DISCLAIM ANY REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, BY STATUTE, OR OTHERWISE, RELATING TO (A) THE TITLE TO ANY OF THE ACQUIRED ASSETS, (B) THE CONDITION OF THE ACQUIRED ASSETS (INCLUDING ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO MODELS OR SAMPLES OF MATERIALS), IT BEING UNDERSTOOD THAT, OTHER THAN AS SET FORTH HEREIN OR IN THE OTHER TRANSACTION DOCUMENTS, THE ASSETS ARE BEING SOLD "AS IS," "WHERE IS," AND "WITH ALL FAULTS AS TO ALL MATTERS," (C) FREEDOM FROM HIDDEN OR REDHIBITORY DEFECTS OR VICES, (D) ANY INFRINGEMENT BY SELLERS OF ANY PATENT OR PROPRIETARY RIGHT OF ANY THIRD PARTY, AND (E) ANY INFORMATION, DATA, OR OTHER MATERIALS.

(b) Buyer acknowledges and affirms that it has made its own independent investigation, analysis, and evaluation of the Transactions contemplated hereby and the Acquired Assets (including Buyer's own estimate and appraisal of the extent and value of the Acquired Assets). Buyer acknowledges that in entering into this Agreement, it has relied on the aforementioned investigation. Buyer hereby irrevocably covenants to refrain from, directly or indirectly, asserting any claim, or commencing, instituting, or causing to be commenced, any Proceeding of any kind against Sellers or any of their respective Affiliates or Subsidiaries, alleging facts contrary to the foregoing acknowledgment and affirmation.

ARTICLE 6
COVENANTS OF THE PARTIES

6.1 Conduct of Business Pending the Closing. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement in accordance with its terms and the Closing (or, solely with respect to the Specified Domain Names, the Subsequent Closing) (the "Interim Period"), except (x) as may be required by Order of the Bankruptcy Court (provided that no Seller directly or indirectly petitioned, sought, requested or moved for such order of the Bankruptcy Court or authorized, supported or directed any other Person to petition, seek, request or move for such Order of the Bankruptcy Court), (y) as contemplated in the Liquidation Agreement, or (z) as contemplated by the Approved Budget, Sellers shall carry on the Business in the Ordinary Course of Business and, to the extent consistent therewith, use commercially reasonable efforts to preserve the Business intact and preserve the goodwill of and relationships with Governmental Entities, customers, suppliers, employees and others having business dealings with the Business. Notwithstanding the first sentence of this Section 6.1, during the Interim Period, except (I) as contemplated in the Liquidation Agreement or (II) as contemplated by the Approved Budget, Sellers shall not, and shall cause their Affiliates not to, directly or indirectly, without the prior written consent of Buyer:

(a) modify, amend, terminate, waive any material rights or obligations under or otherwise seek to reject any Assumed Contract;

(b) extend the Sale Termination Date under the Liquidation Agreement beyond April 30, 2019;

(c) lease, license, surrender, relinquish, sell, transfer, convey, assign or otherwise dispose of any interest in any Acquired Assets other than pursuant to an Order of the Bankruptcy Court (provided that no Seller directly or indirectly petitioned, sought, requested or moved for such order of the Bankruptcy Court or authorized, supported or directed any other Person to petition, seek, request or move for such Order of the Bankruptcy Court);

(d) mortgage, pledge or subject to Liens (other than Permitted Liens) any of the Acquired Assets or any part thereof;

(e) institute, settle, compromise or agree to settle any (i) material Proceeding (other than the Chapter 11 Cases) before any Governmental Entity relating primarily or exclusively to the Acquired Assets or (ii) pending or threatened Claim that could give rise to Liabilities that

are not Assumed Liabilities, or modify in any manner that is adverse to the Acquired Assets, rescind, reject or terminate a Transferable Permit (or application therefor) relating primarily or exclusively to the Acquired Assets;

(f) with respect to any Acquired Asset, (i) make, change or revoke any material Tax election, (ii) change any annual Tax accounting period, (iii) enter into any agreement with respect to material Taxes or apply for any Tax ruling, (iv) file any amended Tax Return, (v) settle or compromise any Tax Liability or Claim for a Tax refund, (vi) surrender any right to Claim a refund for Taxes, (vii) incur any material Tax Liability outside of the Ordinary Course of Business, (viii) consent to an extension of the statute of limitations applicable to any Tax Claim or assessment (other than pursuant to extensions of time to file Tax Returns obtained in the Ordinary Course of Business) or (ix) change (or request any Governmental Entity to change) any material aspect of its method of accounting for Tax purposes, in each case, except as required by applicable Law; or

(g) enter into any Contract to do any of the foregoing.

Nothing contained in this Agreement is intended to give Buyer or its Affiliates, directly or indirectly, the right to control or direct the business of Sellers prior to the Closing.

6.2 Back-Up Bidder. If an Auction is conducted, and Buyer is not the Successful Bidder for the Acquired Assets, Buyer shall, in accordance with and subject to the Bidding Procedures, be required to serve as the back-up bidder if Buyer is the next highest or otherwise best bidder for the Acquired Assets at the Auction (the party that is the next highest or otherwise best bidder at the Auction after the Successful Bidder, the "Back-Up Bidder") and, if Buyer is the Back-Up Bidder, Buyer shall, notwithstanding Section 8.1(b)(ii), be required to keep its bid to consummate the Transactions on the terms and conditions set forth in this Agreement (as the same may be improved upon by Buyer in the Auction) open and irrevocable until the Outside Back-Up Date. Following the Auction, if the Successful Bidder fails to consummate the applicable Alternative Transaction as a result of a breach or failure to perform on the part of such Successful Bidder, then Buyer, if Buyer is the Back-Up Bidder, will be deemed to have the new prevailing bid, and Sellers may seek authority to consummate the Transactions on the terms and conditions set forth in this Agreement (as the same may be improved upon by Buyer in the Auction) with the Back-Up Bidder.

6.3 Access. Subject to applicable Law, during the Interim Period, Sellers (a) shall give Buyer and its Representatives reasonable access during normal business hours to the offices, properties, officers, employees, accountants, auditors, counsel and other representatives, books and records of Sellers in each case to the extent relating primarily or exclusively to the Acquired Assets, as Buyer reasonably deems necessary in connection with effectuating the Transactions contemplated by this Agreement (b) shall furnish to Buyer and its Representatives such information relating primarily or exclusively to the Acquired Assets as Buyer and its Representatives reasonably request and (c) shall cooperate reasonably with Buyer in its investigation of the Acquired Assets. It is acknowledged and understood that no investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or other agreement given or made by Sellers hereunder. Notwithstanding the foregoing, Buyer shall not have, by virtue of this Section 6.3, any additional access or investigation right to the extent it relates to the negotiation of this Agreement or the Transactions. Buyer agrees to indemnify and hold Sellers and their Affiliates and their respective Representatives harmless of and from all actions, Claims, investigations, deficiencies, costs and expenses (including attorneys' fees and expenses) that arise out of or relate to physical injuries arising from Buyer's inspection of the Acquired Assets (other than to the extent any of the foregoing results from the willful misconduct of the Person seeking such indemnification), and notwithstanding anything to the contrary in this Agreement, such obligation to indemnify shall survive Closing or any termination of this Agreement.

6.4 Public Announcements. Buyer and Sellers will consult with each other before issuing, and provide each other the opportunity to review and comment upon, any press release or public announcement of this Agreement and the Transactions (which press release or public announcement shall be distributed by email to the parties in the Notice section of this Agreement), and neither Buyer nor any Seller shall issue any such press release or public announcement without the prior approval of the other Party, which approval will not be unreasonably withheld or delayed, in each case except as may be required by Law, court process (including the filing of this Agreement with the Bankruptcy Court) or by obligations pursuant to any listing agreement with any national securities exchange. Buyer and each Seller shall cause its Affiliates and Representatives to comply with this Section 6.4. Notwithstanding the foregoing, Buyer shall have no obligation to consult with or seek approval from Sellers prior to (i) filing, distributing or furnishing its Form 8-K (including all exhibits, appendices, or other attachments thereto) with or to the Securities and Exchange Commission or (ii) issuing a press release, in either case announcing entry into this Agreement (and the other Transaction Documents) and the Transactions or that it is the Successful Bidder or Back-up Bidder following the Auction.

6.5 Tax Matters.

(a) All Transfer Taxes arising out of the transfer of the Acquired Assets pursuant to this Agreement shall be borne by Buyer. Sellers and Buyer shall cooperate to timely prepare and file any Tax Returns relating to such Transfer Taxes, including any Claim for exemption or exclusion from the application or imposition of any Transfer Taxes. Buyer or Sellers, as applicable, shall file all necessary documentation and returns with respect to such Transfer Taxes when due, and shall promptly, following the filing thereof, furnish a copy of such return or other filing and a copy of a receipt showing payment of any such Transfer Tax to the other Parties hereto. Buyer shall pay all such Transfer Taxes when due. Notwithstanding the foregoing, Sellers shall be reimbursed by Buyer with respect to any such Transfer Taxes paid by Sellers.

(b) Each of Buyer, on the one hand, and Sellers, on the other hand, shall furnish or cause to be furnished to the other, upon request, as promptly as practicable, such information and assistance relating primarily or exclusively to the Acquired Assets as is reasonably necessary for filing of all Tax Returns, including any Claim for exemption or exclusion from the application or imposition of any Taxes, the preparation for any audit by any Tax Authority and the prosecution or defense of any Proceeding relating to any Tax Return.

6.6 Approvals; Reasonable Best Efforts; Notification; Consent.

(a) Subject to the terms and conditions of this Agreement, each Party shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper or advisable under applicable Law to consummate and make effective the Transactions. Without limiting the generality of the foregoing, the Parties will, at Buyer's sole cost and expense, use their respective reasonable best efforts to (i) prepare and file as soon as practicable all forms, registrations and notices relating to the consents of Governmental Entities that are required by applicable Law to be filed in order to consummate Transactions that are material to the Acquired Assets or to Buyer and its Affiliates (with respect to any filing required under the HSR Act, within five (5) Business Days following the Agreement Date, and with respect to any other such filing, as soon as reasonably possible), and take such actions as are reasonably necessary to obtain any consents from, or to avoid any action or proceeding by, any Governmental Entity relating to such approvals, including any Notification and Report Forms in connection with the HSR Act or approvals required under Environmental Law, including notifications and approvals necessary to transfer Permits, licenses and other authorizations required under Environmental Law (to the extent such Permits, licenses and other authorizations are transferable), (ii) take all actions necessary to transfer the Acquired Assets, (iii) take all actions necessary to cause all conditions set forth in Article 7 to

be satisfied as soon as practicable (iv) lift or rescind any existing Order preventing, prohibiting or delaying the consummation of the Transactions, (v) effect all necessary registration, applications, notices and other filings required by applicable Law, including, as applicable to Sellers, under the Bankruptcy Code, and (vi) execute and deliver any additional instruments necessary to fully carry out the purposes of this Agreement; provided, however, that nothing in this Agreement, including this Section 6.6 shall require Buyer to (A) consent to any material condition or material concession required by any Governmental Entity or third party; (B) consent to any divestitures of any material subsidiary or material assets of Buyer or its Affiliates, or of the Acquired Assets or accept any material limitation on or material condition on the manner in which any of the foregoing conducts their business; (C) pay any material amounts required or requested by any Governmental Entity; or (D) accept an agreement to hold separate any material portion of any business or of any material assets of any material subsidiary of Buyer or its Affiliates, or of the Acquired Assets. Buyer and Sellers shall not, and shall cause their respective Affiliates not to, take any action that would reasonably be expected to prevent or materially delay the approval of any Governmental Entity of any of the filings referred to in this Section 6.6(a).

(b) Each Party shall (i) respond as promptly as reasonably practicable to any inquiries or requests for additional information and documentary material received from any Governmental Entity relating to the matters described in Section 6.6(a), (ii) not extend any waiting period or agree to refile under the HSR Act (except with the prior written consent of the other Parties hereto, which consent shall not be unreasonably withheld, conditioned or delayed) and (iii) not enter into any agreement with the any Governmental Entity agreeing not to consummate the Transactions.

(c) In connection with and without limiting the foregoing, each Party shall, subject to applicable Law and except as prohibited by any applicable representative of any applicable Governmental Entity: (i) promptly notify the other Parties of any material written communication to that Party from any Governmental Entity concerning this Agreement or the Transactions, and permit the other Parties to review in advance (and to consider any comments made by the other Parties in relation to) any proposed written communication to any of the foregoing; (ii) not participate in or agree to participate in any substantive meeting, telephone call or discussion with any Governmental Entity in respect of any filings, investigation or inquiry concerning this Agreement or the Transactions unless it consults with the other Parties in advance and, to the extent permitted by such Governmental Entity, gives the other Parties the opportunity to attend and participate in such meeting, telephone call or discussion; and (iii) subject to the attorney-client and similar applicable privileges, furnish outside legal counsel for the other Parties with copies of all correspondence, filings, and written communications (and memoranda setting forth the substance thereof) between such Party and its Affiliates and their respective Representatives, on the one hand, and any Governmental Entity or its members or their respective staffs, on the other hand, with respect to this Agreement and the Transactions; provided, however, that any such Party may limit the disclosure of filings to protect confidential information, including limiting dissemination of filings to an "outside counsel only" basis.

6.7 Reserved.

6.8 Further Assurances. The Parties agree to (a) furnish upon request to each other such further information, (b) execute, acknowledge and deliver to each other such other documents and (c) do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the Transaction Documents, including, without limitation, execution and delivery of the Power of Attorney Agreement; provided that nothing in this Section 6.8 or this Agreement shall prohibit Sellers from ceasing operations or winding up their affairs following the Closing. At the Closing, Sellers shall execute and deliver to Buyer such other instruments of transfer as shall be reasonably necessary or appropriate to vest in Buyer title to the Acquired Assets free and clear of all Liens (other than Permitted Liens) and to comply with the purposes and intent of this Agreement and such other instruments as shall be reasonably necessary or appropriate to evidence the assignment by Sellers and assumption by Buyer of the Acquired Assets. Each of Sellers, on the one hand, and Buyer, on the other hand, shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Law, and execute and deliver such documents and other papers, as may be required to consummate the Transactions contemplated by this Agreement at or after the Closing, including, assistance by Sellers (with respect to applicable filing, submission or similar fees, at Buyer's cost and expense) with the transfer of the Transferred Intellectual Property (including with respect to making all appropriate filings and submissions with the United States Copyright Office, United States Patent and Trademark Office and any applicable similar agencies in foreign jurisdictions promptly after Closing, and in any event within thirty (30) days of Closing) and taking whatever steps or actions that are reasonably necessary to transfer the domain names included in the Transferred Intellectual Property, including, (i) causing any party under Sellers' control to execute such documents and do all other acts reasonably necessary to transfer such domain names to Buyer, (ii) taking any and all actions that may be required or recommended by the applicable domain name registrars to effectuate and/or record the transfer of such domain names from Sellers to Buyer with such registrars, (iii) causing the administrative and technical contact(s) for such domain names to take all steps as may be reasonably necessary to effect the transfer and recordation of the domain names from Sellers to Buyer, (iv) providing Buyer or its permitted successors, assigns or other legal representatives with the details of any account information or passwords necessary for Buyer to control the domain names, and (v) taking any acts necessary to cause the publicly available records accessible through the "Whois" system to state that Buyer is the registrant of the Domain Names (in the case of (i) – (v) at the Closing or the Subsequent Closing, as applicable).

6.9 Bankruptcy Court Filings.

(a) Seller will file the results of the Auction, the notice of the Successful Bidder and the Proposed Assumed Contracts Notice (as defined in the Bidding Procedures), in accordance with the Bidding Procedures and with the Bankruptcy Court prior to Closing. Seller shall give appropriate notice, and provide appropriate opportunity for hearing, to all Persons entitled thereto, of all motions, orders, hearings and other proceedings relating to this Agreement and the Transactions contemplated hereby and thereby and such additional notice as ordered by the Bankruptcy Court.

(b) Sellers shall use reasonable best efforts to secure entry of the Sale Order. Sellers shall use reasonable best efforts to demonstrate to the Bankruptcy Court that they have taken reasonable steps to obtain the highest, best or otherwise financially superior offer possible for the Acquired Assets under the circumstances. Sellers shall use their commercially reasonable efforts to secure expedited resolution of any appeal, petition or motion for reconsideration, modification amendment, vacation, stay rehearing or re-argument related to the Sale Order. Sellers shall use commercially reasonable efforts to comply (or obtain an Order from the Bankruptcy Court waiving compliance) with all requirements under the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules in connection with obtaining approval of the Sale Order. Sellers shall consult in good faith with Buyer and its Representatives concerning the Sale Order, any other Orders of the Bankruptcy Court relating to the Transactions, and the bankruptcy proceedings in connection therewith, and use commercially reasonable efforts to provide Buyer with copies of applications, pleadings, notices, proposed Orders and other documents relating to such proceedings as soon as reasonably practicable but no later than one (1) Business Day (to the extent reasonably practicable), prior to filing. Any material pleadings, notices, proposed Orders and documents relating to the Transactions filed with the Bankruptcy Court by Sellers after the date hereof shall be in form and substance reasonably acceptable to Buyer prior to being filed with the Bankruptcy Court.

(c) Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Order and a finding of adequate assurance of future performance by Buyer or Designated Purchaser, as applicable, under the Assumed Contracts, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing

necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a "good faith" purchaser under section 363(m) of the Bankruptcy Code; provided, however, in no event shall Buyer or Sellers be required to agree to any amendment of this Agreement.

(d) Sellers further covenant and agree that, after the entry of the Sale Order, the terms of any reorganization or liquidation plan it submits to the Bankruptcy Court, or any other court for confirmation or sanction, shall not be intended to (or reasonably likely to) supersede, abrogate, nullify or restrict the terms of this Agreement in any material respect, or prevent the consummation or performance of the Transactions, in each case except as expressly permitted pursuant to Section 6.2 or the Bidding Procedures.

6.10 Cure Costs. Sellers shall transfer and assign all Assumed Contracts to Buyer or Designated Purchaser, as applicable, and Buyer or Designated Purchaser, as applicable, shall assume all Assumed Contracts from Sellers, as of the Closing Date pursuant to section 365 of the Bankruptcy Code and the Sale Order. Seller shall use reasonable best efforts to provide Buyer with a good faith estimate of the Cure Costs for each Assumed Contract as soon as reasonably practicable after the Agreement Date. In connection with the assignment and assumption of the Assumed Contracts, Buyer or Designated Purchaser, as applicable, shall cure any monetary defaults under the Assumed Contracts by payment of any Cure Costs (or create reserves therefor) as determined in accordance with the Bidding Procedures. Buyer or Designated Purchaser, as applicable, shall be responsible for demonstrating and establishing adequate assurance of future performance before the Bankruptcy Court with respect to the Assumed Contracts; provided, however, that there shall be no Cure Costs incurred by Buyer, Designated Purchaser or any of their respective Affiliates with respect to the assignment and assumption by Buyer or Designated Purchaser, as applicable, of the Zeavion License Agreement.

6.11 Preservation of Books and Records. After the Closing Date, Buyer shall provide to Sellers and their respective Affiliates and Representatives (after reasonable notice and during normal business hours and without charge to Sellers other than the costs of copying, if any) reasonable access to, including the right to make copies of, all books and records included in and otherwise related to the Acquired Assets, to the extent necessary to permit Sellers to determine any matter relating to its rights and obligations hereunder or to any period ending on or before the Closing Date (for example, for purposes of any Tax or accounting audit or any claim or litigation matter, but not for any dispute or claim between Buyer and Seller in connection with this Agreement, the Transaction Documents or otherwise), for periods prior to the Closing and shall preserve such books and records until the later of (i) such period as shall be consistent with Buyer's records retention policy in effect from time to time, (ii) the retention period required by applicable Law, (iii) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases or (iv) in the case of books and records relating to Taxes, the expiration of the statute of limitations applicable to such Taxes. Such access shall include access to any information in electronic form to the extent reasonably available. Buyer acknowledges that Sellers have the right to retain originals or copies of all of books and records included in or related to the Acquired Assets for periods prior to the Closing.

6.12 Bulk Transfer Laws. The Parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any security interests in the Acquired Assets, including any liens or claims arising out of the bulk transfer laws, and the parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with the "bulk sales," "bulk transfers" or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the Transactions contemplated by this Agreement.

6.13 Transfer of Assets. Buyer agrees to assume responsibility for, and pay all expenses in connection with, removing, transporting or relocating all Acquired Assets that, at the Closing, are located at any of the facilities or Real Property of any Seller or any of their Affiliates, and which, if reasonably requested by Buyer, have been packaged by any Seller (which packaging shall be at the Buyer's cost and expense) for transport. Other than the items set forth in Section 3.1(b) which are to be delivered at Closing, such removal, transportation or relocation shall be completed by Buyer within thirty (30) days following the Closing Date. Sellers agree, from and after the Closing Date, to provide Buyer, its agents and employees, reasonable access to such facilities during reasonable business hours and upon reasonable notice for purposes of removing such Acquired Assets. Sellers shall have no Liability to Buyer in connection with the storage at, or removal from, such facilities of such Acquired Assets after the Closing, and risk of loss with respect to such Acquired Assets shall pass to Buyer upon the Closing. Buyer shall be responsible for the costs of repairing any damage to such facilities resulting from the removal of such Acquired Assets therefrom after the Closing Date.

6.14 Payments from Third Parties After Closing. In the event that any Seller receives any payment from a third party (other than Buyer or any of its Affiliates) after the Closing Date pursuant to any of the Assumed Contracts (or with respect to the operation by Buyer of any Acquired Asset during the post-Closing period) and to the extent such payment is not in respect of an Excluded Asset or an Excluded Liability, Sellers shall forward such payment, as promptly as practicable but in any event within thirty (30) days after such receipt, to Buyer (or other entity nominated by Buyer in writing to Sellers) and notify such third party to remit all future payments (in each case, to the extent such payment is in respect of any post-Closing period with respect to an Acquired Asset and is not in respect of an Excluded Asset or an Excluded Liability) pursuant to the Assumed Contracts to Buyer (or such other entity). Notwithstanding anything to the contrary in this Agreement, in the event that Buyer or any of its Affiliates receives any payment from a third party after the Closing on account of, or in connection with, any Excluded Asset, Buyer shall forward such payment, as promptly as practicable but in any event within thirty (30) days after such receipt, to Sellers (or other entity nominated by Sellers in writing to Buyer) and notify such third party to remit all future payments on account of or in connection with any Excluded Assets to Sellers (or such other entity).

6.15 Use of Names. Gemstone and its Subsidiaries shall have the limited, non-transferable, non-sublicensable, royalty-free, non-exclusive right to use the "Gymboree" name or any variations or derivatives thereof or any trademarks or logos embodying the foregoing (collectively, the "Names") as currently used by Gemstone and its Subsidiaries and in a manner substantially consistent with or substantially analogous to the scope of use of the Names by Gemstone and its Subsidiaries in the twelve (12) month period prior to the Closing, and solely in connection with the Liquidation Agreement and the wind-down of the Gemstone and Coral Brick and Mortar Business, including with respect to (a) the legal names of Gemstone and its Subsidiaries, (b) existing signage on and in physical facilities, labeling, stationery, business forms, supplies and advertising and promotional materials bearing the Names, and (c) as part of the Specified Domain Names in the case of (a) and (b), until thirty (30) days (the "Termination Date For Use of Name") following the earliest of (i) the date on which the Chapter 11 Cases are terminated, (ii) the date on which the Chapter 11 Cases are fully and finally resolved and (iii) the date that is ninety (90) days after the Closing and, in the case of (c), until the earliest of (i) the date on which the Sale (as defined in the Liquidation Agreement as in existence on January 18, 2019) has terminated and the Agent is no longer using the Specified Domain Names and (ii) the Subsequent Closing Date; provided, however, that neither Gemstone nor any of its Subsidiaries shall (i) take any action that would reasonably be expected to impair the value of or goodwill associated with the Names, or (ii) apply the Names to any product or other materials that were not existing as of the Closing or use the Names in connection with any service, location or business that was not existing as of the Closing. Gemstone and each of its Subsidiaries acknowledges and agrees that, as of the Closing, the Names shall be the exclusive property of the Buyer as of the Closing (subject to the rights of Gemstone and its Subsidiaries pursuant to this Section 6.15), and that any and all goodwill arising in connection with the use of the Names inures solely to

Buyer, and that all such use is subject to quality standards set by Buyer and communicated to Gemstone and its Subsidiaries from time to time. The right of Gemstone and its Subsidiaries to use the Names shall be subject to Buyer's control of the character and quality of the goods and services provided by Gemstone and its Subsidiaries in association with the Names, and such quality control obligations shall be met so long as the goods and services provided by Gemstone and its Subsidiaries in association with the Names are of a character and quality substantially equivalent to or better than the quality of those provided by Gemstone and its Subsidiaries in the twelve (12) month period prior to the Closing. No later than the Termination Date For Use of Name, Sellers shall cease all usage of the Names, including (i) filing appropriate documents with the Bankruptcy Court changing the caption of the Bankruptcy Case to one that does not contain the name of any of the Transferred Intellectual Property or any similar or confusing name and (ii) filing amendments with the appropriate Governmental Authorities changing their respective corporate names, "doing business as" name, trade name, and any other similar corporate identifier to one that does not contain the name of any of the Transferred Intellectual Property or any similar or confusing name.

6.16 Notification of Certain Matters.

(a) Gemstone will promptly notify Buyer of: (i) any written notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transactions contemplated by this Agreement, except with respect to any consent the failure of which to be obtained would not be, or reasonably be expected to be, material to the Acquired Asset; (ii) any written notice or other communication from any Governmental Entity (other than the Chapter 11 Cases) related to or in connection with the Transactions contemplated by this Agreement; and (iii) promptly upon discovery thereof, any material variances from, or the existence or occurrence of any event, fact or circumstance arising after the execution of this Agreement that would reasonably be expected to cause any of the representations and warranties contained in Article 4 to be untrue or inaccurate in a manner that would reasonably be expected to cause the conditions set forth in Section 7.1 not to be satisfied.

(b) Sellers shall use their reasonable best efforts to deliver to Buyer the following additional information (as of the Agreement Date) within ten (10) Business Days after the Agreement Date a true and complete list of each Necessary Consent.

6.17 Confidentiality.

(a) Upon and for a period of one (1) year following the Closing, Sellers shall, and shall cause their respective Affiliates and representatives to, keep confidential all non-public information regarding the Acquired Assets, except for (i) such public disclosure as Sellers and its counsel may reasonably determine to be required under any applicable Law, regulation, stock exchange requirement or Order (provided that Sellers will provide Buyer with prior written notice of any such disclosure to the extent permitted by applicable Law and, where applicable and reasonably requested by Buyer and at Buyer's sole cost and expense, Sellers will use commercially reasonable efforts to cooperate with Buyer to obtain a protective order or other confidential treatment or otherwise limit the scope of information that is required to be disclosed, and Sellers shall only disclose that portion of such information as Sellers are advised by its in counsel in writing is required to be disclosed) and (ii) disclosure to its representatives solely to the extent that such parties need to know such information and agree to be bound by confidentiality obligations no less protective than those set forth in this Section 6.17(a). Sellers will be responsible for any disclosure by their respective Affiliates and representatives of any such non-public information regarding the Acquired Assets to the same degree as if such disclosure were made by Sellers.

(b) Subject to Section 6.4, during the Interim Period, each of Buyer and Seller shall, and shall cause their respective Affiliates, and representatives to, abide by the confidentiality provisions set forth in that certain Confidentiality Agreement, dated as of January 24, 2019, by and between Gemstone and The Children's Place, Inc.

6.18 Communication With Other Bidders. Unless prohibited by Law, Buyer (and its representatives) may, with the prior written approval of Sellers (which such approval may be granted or withheld in Sellers' sole discretion) initiate, participate or agree to participate in any meeting or engage in substantive discussion with any potential bidders in the Auction regarding this Agreement, the Transactions, the Business, the Auction or any matter related thereto (including discussions regarding potential joint bidding arrangements or stalking horse bids with respect to specific parts of the Business).

6.19 Personally Identifiable Information. Buyer acknowledges that the Acquired Assets include personally identifiable information within the meaning of Section 363(b) of the Bankruptcy Code, including personal information about the Sellers' customers (such Acquired Assets collectively, "PII"). In connection therewith, from and after the Closing, Buyer shall: (a) maintain appropriate security controls and procedures (technical, operational, managerial and otherwise) to protect PII, (b) abide by all Laws applicable to PII and (c) take such further actions with respect to PII as may be agreed between the Parties in their discretion. Buyer further agrees that it shall (i) abide by Sellers' privacy policies and privacy-related covenants made in Sellers' terms of service that were in effect as of the Petition Date, with respect to such PII (it being understood that Buyer may revise such policies and terms as provided by such policies and terms), (ii) respect prior requests of customers to opt out of receipt of marketing messages (to the extent Sellers make Buyer aware of such requests; provided, that Buyer shall seek to obtain such information from Sellers) and (iii) use personal information only for the purposes of continuing operations in respect of the Acquired Assets following the Closing and continuing to provide similar goods and services to customers, including marketing the products and services related to Acquired Assets or as otherwise permitted by Sellers' privacy policies or privacy-related covenants made in Sellers' terms of service.

6.20 Customer Data.

(a) Promptly following the Subsequent Closing Date, Sellers shall deliver to Buyer (in the same format that Customer Data is required to be delivered at the Closing pursuant to Section 3.1(b)(iii)) a copy of any Customer Data collected between the Closing and the Subsequent Closing Date as a result of the use of the Specified Domain Names as contemplated by Section 6.15.

(b) From the Closing Date through the Subsequent Closing Date, Sellers will make publicly available a new privacy policy that expressly provides that any Personal Information may be shared with, and transferred to, Buyer, as the acquiror of the Acquired Assets, and will be subject to Buyer's publicly available privacy policy.

ARTICLE 7
CONDITIONS TO OBLIGATIONS OF THE PARTIES

7.1 Conditions Precedent to Obligations of Buyer. The obligation of Buyer to consummate the Transactions is subject to the satisfaction (or written waiver by Buyer in Buyer's sole discretion) at or prior to the Closing Date of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Sellers (i) set forth in Section 4.1 (*Organization*) and Section 4.2 (*Due Authorization*) (collectively, the "Seller Fundamental Representations") shall be true and correct in all respects and (ii) set forth in Article 4 (other than the Seller Fundamental Representations) shall be true and correct (disregarding all qualifications or limitations as to "materiality" or "Sellers Material Adverse Effect" and words of similar import set forth therein), except where the failure of such representations or warranties to be true and correct would not reasonably be expected to have a Sellers Material Adverse Effect, in the case of each of clauses (i) and (ii), as of the Agreement Date and at and as of the Closing as though made at and as of the Closing (in each case, except to the extent expressly made as of another date, in which case as of such date as if made at and as of such date).

(b) Performance of Obligations. Sellers shall have performed in all material respects all obligations and agreements contained in this Agreement required to be performed by them on or prior to the Closing Date.

(c) Officer's Certificate. Buyer shall have received a certificate, dated the Closing Date, of an executive officer of each Seller to the effect that the conditions specified in Section 7.1(a) and Section 7.1(b) above have been fulfilled and/or waived.

(d) Antitrust Approval. All applicable waiting periods under the HSR Act related to the Transactions shall have expired or been terminated, if required.

(e) Sale Order. After notice and a hearing as defined in Section 102(1) of the Bankruptcy Code, the Bankruptcy Court shall have entered the Sale Order, and such Sale Order shall be in full force and effect and shall not have been reversed, stayed, modified, amended or vacated, and as to which the time to appeal or seek certiorari or move for a vacatur, new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a vacatur, new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the Order was appealed or from which certiorari was sought or the vacatur, new trial, reargument or rehearing shall have been denied or resulted in no modification of such Order. The Sale Order shall provide that the Sale Term as defined in the Liquidation Agreement shall cease on or before April 30, 2019 without further amendment.

(f) No Order. No court or other Governmental Entity has issued, enacted, entered, promulgated or enforced any Law or Order (that is final and non-appealable and that has not been vacated, withdrawn or overturned) restraining, enjoining or otherwise prohibiting the Transactions contemplated by this Agreement.

(g) Assumed Contracts. The Bankruptcy Court shall have approved and authorized the assumption and assignment of the Assumed Contracts.

7.2 Conditions Precedent to the Obligations of Sellers. The obligation of Sellers to consummate the Transactions is subject to the satisfaction (or written waiver by Sellers) at or prior to the Closing Date of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Buyer (i) set forth in Section 5.1 (*Organization*) and Section 5.2 (*Due Authorization*), shall be true and correct in all material respects and (ii) set forth in Article 5 (other than those described in clause (i)) shall be true and correct (disregarding all qualifications or limitations as to "materiality" or "Buyer Material Adverse Effect" and words of similar import set forth therein), except where the failure of such representations or warranties to be true and correct would not reasonably be expected to have a Buyer Material Adverse Effect, in the case of each of clauses (i) and (ii), as of the Agreement Date and at and as of the Closing as though made at and as of the Closing (in each case, except to the extent expressly made as of another date, in which case as of such date as if made at and as of such date).

(b) Performance of Obligations. Buyer shall have performed in all material respects all obligations and agreements contained in this Agreement required to be performed by it on or prior to the Closing Date.

(c) Officer's Certificate. Sellers shall have received a certificate, dated the Closing Date, of an executive officer of Buyer to the effect that the conditions specified in Section 7.2(a) and Section 7.2(b) above have been fulfilled and/or waived.

(d) Antitrust Approval. All applicable waiting periods under the HSR Act related to the Transactions shall have expired or been terminated, if required.

(e) Sale Order. After notice and a hearing as defined in Section 102(1) of the Bankruptcy Code, the Bankruptcy Court shall have entered the Sale Order, and such Sale Order shall be in full force and effect and shall not have been reversed, stayed, modified, amended or vacated, and as to which the time to appeal or seek certiorari or move for a vacatur, new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a vacatur, new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the Order was appealed or from which certiorari was sought or the vacatur, new trial, reargument or rehearing shall have been denied or resulted in no modification of such Order.

(f) No Order. No court or other Governmental Entity has issued, enacted, entered, promulgated or enforced any Law or Order (that is final and non-appealable and that has not been vacated, withdrawn or overturned) restraining, enjoining or otherwise prohibiting the Transactions contemplated by this Agreement.

7.3 Frustration of Conditions Precedent. None of Buyer or Sellers may rely on the failure of any condition set forth in this Article 7, as applicable, to be satisfied if such failure was caused by such Party's failure to use, as required by this Agreement, its reasonable best efforts to consummate the Transactions contemplated hereby.

ARTICLE 8
TERMINATION

8.1 Termination of Agreement. This Agreement may be terminated and the Transactions abandoned at any time prior to the Closing:

(a) by written agreement of Sellers and Buyer;

(b) by either Sellers or Buyer:

(i) if there shall be any Law that makes consummation of the Transactions illegal or otherwise prohibited, or if any Order permanently restraining, prohibiting or enjoining Buyer or Sellers from consummating the Transactions is entered and such Order shall become final, provided, however, that no termination may be made by a Party under this Section 8.1(b)(i) if the issuance of such Order was caused by the breach or action or inaction of such Party;

(ii) subject to Section 6.2, upon the filing of a motion by a Seller to approve an Alternative Transaction or the Bankruptcy Court's entry of an order approving an Alternative Transaction; or

(iii) if (A) a trustee or an examiner with expanded powers is appointed in any of the Chapter 11 Cases or (B) any of the Chapter 11 Cases is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;

(c) by Buyer if (i) there shall have been a breach by any Seller of any of its representations, warranties, covenants or agreements contained in this Agreement, which breach would result in the failure to satisfy one or more of the conditions set forth in Section 7.1, or (ii) any other event or condition shall result in any Seller being incapable of satisfying one or more conditions set forth in Section 7.1, and in either case such breach or other event or condition shall be incapable of being cured or, if capable of being cured, shall not have been cured within the earlier of twenty (20) days after written Notice thereof shall have been received by Sellers and the Outside Transaction Date; provided, that as of such date, Buyer is not in breach of this Agreement, which breach would result in the failure to satisfy one or more of the conditions set forth in Section 7.2;

(d) by Buyer if, subject to Section 6.2, (i) Sellers comply with the Bidding Procedures and accept a Successful Bid (as defined in the Bidding Procedures) from a Person other than Buyer or its permitted transferee for the Acquired Assets or (ii) Sellers enter into an Alternative Transaction;

(e) by Sellers, if (i) there shall have been a breach by Buyer of any of its representations, warranties, covenants or agreements contained in this Agreement, which breach would result in the failure to satisfy one or more of the conditions set forth in Section 7.2, or (ii) any other event or condition shall result in Buyer being incapable of satisfying one or more conditions set forth in Section 7.2, and in either case such breach or other event or condition shall be incapable of being cured or, if capable of being cured, shall not have been cured within the earlier of twenty (20) days after written Notice thereof shall have been received by Buyer and the Outside Transaction Date; provided that as of such date, any Seller is not in breach of this Agreement, which breach would result in the failure to satisfy one or more of the conditions set forth in Section 7.1;

(f) by Buyer if a Sale Order has not been entered on or before March 8, 2019, and by Buyer or Sellers if the Closing shall not have occurred on or before April 1, 2019 (the "Outside Transaction Date"); provided, however, that a Party shall be permitted to terminate this Agreement pursuant to this Section 8.1(f) only if such Party is not itself in breach of any of its representations, warranties, covenants or agreements contained herein, which breach would result in the failure of a condition set forth in Article 7;

(g) by Sellers if the governing body of any Seller determines, upon advice from outside legal counsel, that proceeding with the Transactions or failing to terminate this Agreement would violate its or such governing body's fiduciary obligations under applicable Law, including to pursue an Alternative Transaction. For the avoidance of doubt, and subject to the terms and conditions of this Agreement (including Buyer's right to terminate this Agreement in accordance with this Section 8.1), Sellers retain the right to pursue any transaction or restructuring strategy that, in Sellers' business judgment, will maximize the value of their estates;

(h) by Sellers if Buyer shall not have deposited the full Deposit, in an aggregate amount equal to $7,600,000, by 11:59 p.m. New York time on March 4, 2019; and

(i) by written notice from Buyer to Gemstone, if Buyer is neither the Successful Bidder nor the Backup Bidder following the Auction.

8.2 Consequences of Termination. In the event this Agreement is terminated pursuant to Section 8.1(e) or otherwise terminated pursuant to Section 8.1 by Buyer and could have been terminated at the same time by Seller pursuant to Section 8.1(e), Sellers shall retain the Deposit; provided, however, that retention of the Deposit shall constitute liquidated damages and the sole and exclusive remedy of Seller in the event of a termination hereunder and shall limit Seller's remedies against Buyer in any respect of any claim against Buyer arising under this Agreement or otherwise (subject to the last sentence of this Section 8.2). In the event of all other terminations of this Agreement prior to Closing, the Deposit shall be refunded to the Buyer. In the event of any termination of this Agreement by either or both of Buyer and Sellers pursuant to Section 8.1, written Notice thereof shall be given by the terminating Party to the other Parties hereto, specifying the provision hereof pursuant to which such termination is made, this Agreement shall thereupon terminate and become void and of no further force and effect (other than Section 6.4 (*Public Announcements*), this Section 8.2 (*Consequences of Termination*) and Article 9 (*Miscellaneous*) and to the extent applicable in respect of such Sections and Article, Article 1 (*Definitions*)), and the Transactions shall be abandoned without further action of the Parties hereto, except (a) for application of the Deposit as set forth in the foregoing sentence and (b) that such termination shall not relieve any Party of any Liability for Fraud or Willful Breach of this Agreement.

ARTICLE 9
MISCELLANEOUS

9.1 Expenses. Except as set forth in this Agreement and whether or not the Transactions are consummated, each Party hereto shall bear all costs and expenses incurred or to be incurred by such Party in connection with this Agreement and the consummation of the Transactions.

9.2 Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by Sellers without the prior written consent of Buyer, or by Buyer without the prior written consent of Sellers; provided, that Buyer may assign its rights and obligations to a Designated Purchaser so long as Buyer remains primarily liable for its obligations hereunder. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns including any liquidating trustee, responsible Person or similar representative for Sellers or Sellers' estate appointed in connection with the Chapter 11 Cases.

9.3 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of Sellers (and their estates), Buyer (and its Designated Purchasers) and their respective successors, or permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement except as expressly set forth herein.

9.4 Notices. All notices, demands, requests, consents, approvals or other communications (collectively, "Notices") required or permitted to be given hereunder or that are given with respect to this Agreement shall be in writing and shall be personally served, delivered by a nationally

recognized overnight delivery service with charges prepaid, or transmitted by hand delivery, or facsimile or electronic mail, addressed as set forth below, or to such other address as such Party shall have specified most recently by written Notice. Notice shall be deemed given on the date of service or transmission if personally served or transmitted by facsimile or electronic mail with confirmation of receipt; provided that if delivered or transmitted on a day other than a Business Day or after 5:00 p.m. New York time, notice shall be deemed given on the next Business Day. Notice otherwise sent as provided herein shall be deemed given on the next Business Day following timely deposit of such Notice with an overnight delivery service:

If to any Seller: Gymboree Group, Inc.
71 Stevenson Street, Suite 2200
San Francisco, CA 94105
Attention: Jon W. Kimmins and Kimberly Holtz MacMillan
Email: jon_kimmins@gymboree.com and
kimberly_macmillan@gymboree.com

With copies to: Milbank LLP
55 Hudson Yards
New York, NY 10001
Attention: Evan R. Fleck and Scott W. Golenbock
Email: efleck@milbank.com and sgolenbock@milbank.com

If to Buyer: TCP Brands, LLC
c/o The Children's Place, Inc.
500 Plaza Drive, 4th Floor
Secaucus, NJ 070942
Attention: Bradley P. Cost, Esq.,
Senior Vice President and General Counsel
Email: bcost@childrensplace.com
and
Attention: Robert A. Karpf, Esq.,
Group Vice President and Deputy General Counsel
Email: rkarpf@childrensplace.com

With copies to: Torys LLP
1114 Ave of the Americas, 23rd Floor,
New York, NY 10036
Attention: Alison D. Bauer
Email: abauer@torys.com
and
Attention: Edward Fan
Email: efan@torys.com

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attention: Robert Britton
Email: rbritton@paulweiss.com

Rejection of or refusal to accept any Notice, or the inability to deliver any Notice because of changed address of which no Notice was given, shall be deemed to be receipt of the Notice as of the date of such rejection, refusal or inability to deliver.

9.5 Choice of Law. This Agreement shall be construed and interpreted, and the rights of the Parties shall be determined, in accordance with the Laws of the State of New York, without giving effect to any provision thereof that would require or permit the application of the substantive laws of any other jurisdiction.

9.6 Entire Agreement; Amendments and Waivers. This Agreement, the Sale Order, and all Transaction Documents and all certificates and instruments delivered pursuant hereto and thereto constitute the entire agreement among the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties. This Agreement may be amended, supplemented or modified, and any of the terms, covenants, representations, warranties or conditions may be waived, only by a written instrument executed by Buyer and Sellers, or in the case of a waiver, by the Party waiving compliance. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), and no such waiver shall constitute a continuing waiver unless otherwise expressly provided.

9.7 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Counterparts to this Agreement may be delivered via facsimile or electronic mail. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought.

9.8 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

9.9 Headings. The table of contents and the headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement.

9.10 Exclusive Jurisdiction and Specific Performance.

(a) Subject to Section 9.10(b), without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any Claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all Proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive Notices at such locations as indicated in Section 9.4. For the avoidance of doubt, this Section 9.10 shall not apply to any Claims that Buyer or its Affiliates may have against any third party following the Closing.

(b) Notwithstanding anything herein to the contrary, in the event the Chapter 11 Cases of Sellers are closed or dismissed, the Parties hereby agree that all Claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, shall be heard and determined exclusively in any federal court sitting in the Borough of Manhattan in the City of New York or, if that court does not have subject matter jurisdiction, in any state court located in the City and County of New York (and, in each case, any appellate court thereof), and the Parties hereby consent to and submit to the jurisdiction and venue of such courts.

(c) Buyer acknowledges that Sellers would be damaged irreparably in the event that the terms of this Agreement are not performed by Buyer in accordance with its specific terms or otherwise breached or Buyer fails to consummate the Closing and that, in addition to any other remedy that Sellers may have under law or equity, Sellers shall be entitled to seek injunctive relief to prevent breaches of the terms of this Agreement and to seek to enforce specifically the terms and provisions hereof that are required to be performed by Buyer. Buyer further agrees that no Seller shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 9.10, and irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

(d) Sellers acknowledge that Buyer would be damaged irreparably in the event that the terms of this Agreement are not performed by Sellers in accordance with its specific terms or otherwise breached or Sellers fail to consummate the Closing and that, in addition to any other remedy that Buyer may have under law or equity, Buyer shall be entitled to seek injunctive relief to prevent breaches of the terms of this Agreement and to seek to enforce specifically the terms and provisions hereof that are required to be performed by Sellers. Each Seller further agrees that Buyer shall not be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 9.10, and irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

9.11 WAIVER OF RIGHT TO TRIAL BY JURY. SELLERS AND BUYER HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). FOR THE AVOIDANCE OF DOUBT, THIS SECTION 9.11 SHALL NOT APPLY TO ANY CLAIMS THAT BUYER OR ITS AFFILIATES MAY HAVE AGAINST ANY THIRD PARTY FOLLOWING THE CLOSING.

9.12 Survival. Each and every representation and warranty contained in this Agreement shall expire and be of no further force and effect as of the Closing. Each and every covenant and agreement contained in this Agreement (other than the covenants contained in this Agreement which by their terms are to be performed (in whole or in part) by the Parties following the Closing (each, a "Post-Closing Covenant")) shall expire and be of no further force and effect as of the Closing. Each Post-Closing Covenant shall survive the Closing until the earlier of (a) performance of such Post-Closing Covenant in accordance with this Agreement or, (b) (i) if time for performance of such Post-Closing Covenant is specified in this Agreement, sixty (60) days following the expiration of the time period for such performance or (ii) if time for performance of such Post-Closing Covenant is not specified in this Agreement, the expiration of the applicable statute of limitations with respect to any claim for any failure to perform such Post-Closing Covenant; provided that if a written notice of any claim with respect to any Post-Closing Covenant is given prior to the expiration thereof then such Post-Closing Covenant shall survive until, but only for purposes of, the resolution of such claim by final, non-appealable judgment or settlement.

9.13 Computation of Time. In computing any period of time prescribed by or allowed with respect to any provision of this Agreement that relates to Sellers or the Chapter 11 Cases, the provisions of rule 9006(a) of the Federal Rules of Bankruptcy Procedure shall apply.

9.14 Time of Essence. Time is of the essence of this Agreement.

9.15 Non-Recourse. No past, present or future director, manager, officer, employee, incorporator, member, partner or equity holder of any Seller shall have any Liability for any Liabilities of such Seller under this Agreement or for any Claim based on, in respect of, or by reason of the Transactions.

9.16 Disclosure Schedules. Except as set forth in this Agreement, the inclusion of any information (including dollar amounts) in Disclosure Schedules shall not be deemed to be an admission or acknowledgment by any Party that such information is required to be listed on such section of the relevant schedule or is material to or outside the Ordinary Course of Business of any Person. The information contained in this Agreement, the exhibits hereto and the Disclosure Schedules is disclosed solely for purposes of this Agreement, and no information contained herein or therein shall be deemed to be an admission by any Party to any third party of any matter whatsoever (including any violation of any Law or breach of contract). Unless the context otherwise requires, all capitalized terms used in the Disclosure Schedules shall have the respective meanings assigned in this Agreement. The Disclosure Schedules set forth items of disclosure with specific reference to the particular Section or subsection of this Agreement to which the information in the Disclosure Schedules relates; provided, however, that any information set forth in one Section of the Disclosure Schedules will be deemed to apply to each other section or subsection thereof to which its relevance is reasonably apparent on its face.

9.17 Sellers' Representative; Dealings Among Sellers. By its execution and delivery of this Agreement, each Seller hereby irrevocably constitutes and appoints Gemstone as its true and lawful agent and attorney-in-fact (the "Sellers' Representative"), with full power of substitution to act in such Seller's name, place and stead with respect to all Transactions and all terms and provisions of this Agreement, and to act on such Seller's behalf in any Proceeding, and to do or refrain from doing all such further acts and things, and execute all such documents as Sellers' Representative shall deem necessary or appropriate in connection with the Transactions. The appointment of Sellers' Representative shall be deemed coupled with an interest and shall be irrevocable, and Buyer, its Affiliates and any other Person may conclusively and absolutely rely, without inquiry, upon any action of Sellers' Representative on behalf of Sellers in all matters referred to herein or contemplated hereby including any direction regarding the amount of any payment to any Seller. Buyer shall have no obligation of any nature whatsoever for determining any allocation of any payments among Sellers. Without limiting the generality of the foregoing, absent specific direction by Sellers' Representative, Buyer shall be deemed to have fulfilled its obligations hereunder absolutely with respect to any amounts payable by it under or pursuant to this Agreement or the delivery of any instruments if Buyer shall pay any such amounts or deliver such instruments to Sellers'

Representative. All Notices delivered by Buyer (whether prior to or following the Closing) to Sellers' Representative (whether pursuant hereto or otherwise) for the benefit of Sellers shall constitute valid and timely Notice to all of Sellers.

9.18 Mutual Drafting. This Agreement is the result of the joint efforts of Buyer and Sellers, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of the Parties and there is to be no construction against any Party based on any presumption of that Party's involvement in the drafting thereof.

9.19 Fiduciary Obligations. Nothing in this Agreement, or any document related to the Transactions contemplated hereby, without limiting in any way Buyer's rights and remedies set forth in this Agreement, will require any Seller or any of their respective governing bodies, directors, officers or members, in each case, in their capacity as such, to take any action, or to refrain from taking any action, to the extent inconsistent with their fiduciary obligations.

9.20 Releases. Effective as of the Closing: (a) Sellers hereby release Buyer and its Affiliates and the equityholders, directors, managers, officers, employees, members, partners, limited partners, agents and representatives of Buyer and its Affiliates (collectively, the "Buyer Released Parties") from any and all Liabilities, actions, rights of action, contracts, indebtedness, obligations, Claims, causes of action, suits, damages, demands, costs, expenses and attorneys' fees whatsoever, of every kind and nature, known or unknown, disclosed or undisclosed, accrued or unaccrued, existing at any time, in all circumstances arising prior to Closing, that any Seller or its respective Affiliates and all such Persons' respective successors and assigns, have or may have against any of Buyer Released Parties; provided that the foregoing shall not release any rights under this Agreement or any other Transaction Document; and (b) Buyer hereby releases Sellers and their respective Affiliates, and the equityholders, directors, managers, officers, employees, members, partners, limited partners, agents and representatives of Sellers and their respective Affiliates (collectively, the "Sellers Released Parties") from any and all Liabilities, actions, rights of action, contracts, indebtedness, obligations, Claims, causes of action, suits, damages, demands, costs, expenses and attorneys' fees whatsoever, of every kind and nature, known or unknown, disclosed or undisclosed, accrued or unaccrued, existing at any time, in all circumstances arising prior to Closing, that Buyer and its Affiliates and all of its and their respective successors and assigns, have or may have against any of Sellers Released Parties in relation to Gymboree Holding Corporation, a Delaware corporation, or any of its Subsidiaries (including Sellers), or the Transactions contemplated hereby; provided that the foregoing shall not release any rights under this Agreement or any other Transaction Document.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of Sellers and Buyer as of the date first above written.

BUYER:

TCP BRANDS, LLC

By: __
Name: Bradley Cost
Title: Senior Vice President and General Counsel

SELLERS:

GYMBOREE GROUP, INC.

By: __
Name:
Title:

GYMBOREE RETAIL STORES, LLC

By: __
Name:
Title:

GYM-CARD, LLC

By: __
Name:
Title:

GYMBOREE MANUFACTURING, INC.

By: __
Name:
Title:

GYMBOREE DISTRIBUTION, INC.

By: __
Name:
Title:

GYMBOREE OPERATIONS, INC.

By: __
Name:
Title:

GYMBOREE ISLAND, LLC

By: __
Name:
Title:

GYM-MARK, INC.

By: __
Name:
Title:

GYMBOREE WHOLESALE, INC.

By: __
Name:
Title:

EXHIBIT 31.1

Certificate of Principal Executive Officer pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002

I, Jane T. Elfers, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Children's Place, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 29, 2019

By: /S/ JANE T. ELFERS

JANE T. ELFERS
Chief Executive Officer and President
(Principal Executive Officer)

EXHIBIT 31.2

Certificate of Principal Financial Officer pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002

I, Michael Scarpa, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Children's Place, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 29, 2019

By: /S/ MICHAEL SCARPA

MICHAEL SCARPA
Chief Operating Officer and Chief Financial Officer
(Principal Financial Officer)

EXHIBIT 32

Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I, Jane T. Elfers, Chief Executive Officer and President of The Children's Place, Inc. (the "Company"), pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, do hereby certify that to my knowledge:

1. The Quarterly Report of the Company on Form 10-Q for the quarter ended May 4, 2019 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in such quarterly report fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, I have executed this Certification this 29th day of May, 2019.

By: /S/ JANE T. ELFERS

Chief Executive Officer and President
(Principal Executive Officer)

I, Michael Scarpa, Chief Operating Officer and Chief Financial Officer of The Children's Place, Inc. (the "Company"), pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, do hereby certify that to my knowledge:

1. The Quarterly Report of the Company on Form 10-Q for the quarter ended May 4, 2019 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in such quarterly report fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, I have executed this Certification this 29th day of May, 2019.

By: /S/ MICHAEL SCARPA

Chief Operating Officer and Chief Financial Officer
(Principal Financial Officer)

This certification accompanies the Quarterly Report on Form 10-Q of The Children's Place, Inc. for the quarter ended May 4, 2019 pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original copy of this written statement required by Section 906 of the Sarbanes Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission and its staff upon request.