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 October 30, 2004

/ / 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 RETAIL STORES, 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) |

**915 Secaucus Road**
**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 / /

Indicate by check mark whether the registrant is an accelerated filer.

Yes /X/ No / /

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Common Stock, par value $0.10 per share, outstanding at December 7, 2004: 26,995,055 shares.

**THE CHILDREN'S PLACE RETAIL STORES, INC.**

**QUARTERLY REPORT ON FORM 10-Q**

**FOR THE PERIOD ENDED OCTOBER 30, 2004**

**TABLE OF CONTENTS**

**Part I - Financial Information**

## PART I - FINANCIAL INFORMATION

## Item 1. CONSOLIDATED FINANCIAL STATEMENTS

## THE CHILDREN'S PLACE RETAIL STORES, INC. AND SUBSIDIARIES

## CONSOLIDATED BALANCE SHEETS
## (In thousands, except per share amounts)

| | October 30, 2004 (Unaudited) | January 31, 2004 | November 1, 2003 (Unaudited) |
|---|---|---|---|
| **ASSETS** | | | |
| Current assets: | | | |
| Cash and cash equivalents | $ 45,344 | $ 74,772 | $ 44,182 |
| Accounts receivable | 14,249 | 8,462 | 12,747 |
| Inventories | 143,367 | 96,128 | 95,893 |
| Prepaid expenses and other current assets | 23,588 | 20,070 | 21,065 |
| Total current assets | 226,548 | 199,432 | 173,887 |
| Long-term assets: | | | |
| Property and equipment, net | 153,866 | 146,707 | 149,354 |
| Other assets | 14,054 | 13,527 | 9,200 |
| Total assets | $ 394,468 | $ 359,666 | $ 332,441 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | | |
| **LIABILITIES:** | | | |
| Current liabilities: | | | |
| Accounts payable | $ 40,721 | $ 35,173 | $ 34,152 |
| Income taxes payable | 6,979 | 9,733 | 2,986 |
| Accrued expenses, interest and other current liabilities | 49,204 | 40,251 | 41,022 |
| Total current liabilities | 96,904 | 85,157 | 78,160 |
| Long-term liabilities: | | | |
| Deferred rent liabilities | 15,608 | 14,187 | 13,548 |
| Other long-term liabilities | 0 | 3,317 | 2,267 |
| Total liabilities | 112,512 | 102,661 | 93,975 |
| **COMMITMENTS AND CONTINGENCIES** | | | |
| **STOCKHOLDERS' EQUITY:** | | | |
| Common stock, $0.10 par value; 100,000,000 shares authorized; 26,945,104 shares, 26,733,313 shares and 26,664,294 shares issued and outstanding, at October 30, 2004, January 31, 2004 and November 1, 2003, respectively | 2,694 | 2,673 | 2,666 |
| Additional paid-in capital | 103,963 | 101,288 | 99,747 |
| Accumulated other comprehensive income | 5,705 | 2,754 | 938 |
| Retained earnings | 169,594 | 150,290 | 135,115 |
| Total stockholders' equity | 281,956 | 257,005 | 238,466 |
| Total liabilities and stockholders' equity | $ 394,468 | $ 359,666 | $ 332,441 |

The accompanying notes to consolidated financial statements are an integral part of these consolidated statements.

## THE CHILDREN'S PLACE RETAIL STORES, INC.
## AND SUBSIDIARIES

## CONSOLIDATED STATEMENTS OF INCOME
## (Unaudited)
## (In thousands, except per share amounts)

| | Thirteen Weeks Ended | | Thirty-Nine Weeks Ended | |
|---|---|---|---|---|
| | October 30, 2004 | November 1, 2003 | October 30, 2004 | November 1, 2003 |
| Net sales | $ 280,496 | $ 223,277 | $ 695,440 | $ 563,369 |
| Cost of sales | 166,513 | 131,987 | 431,300 | 351,719 |
| Gross profit | 113,983 | 91,290 | 264,140 | 211,650 |
| Selling, general and administrative expenses | 74,010 | 62,083 | 200,914 | 169,462 |
| Depreciation and amortization | 10,493 | 10,154 | 31,195 | 29,557 |
| Operating income | 29,480 | 19,053 | 32,031 | 12,631 |
| Interest (income) expense, net | (48) | 17 | (154) | (128) |
| Income before income taxes | 29,528 | 19,036 | 32,185 | 12,759 |
| Provision for income taxes | 11,845 | 7,424 | 12,881 | 4,977 |
| Net income | $ 17,683 | $ 11,612 | $ 19,304 | $ 7,782 |
| Basic net income per common share | $ 0.66 | $ 0.44 | $ 0.72 | $ 0.29 |
| Basic weighted average common shares outstanding | 26,928 | 26,640 | 26,867 | 26,620 |
| Diluted net income per common share | $ 0.65 | $ 0.43 | $ 0.70 | $ 0.29 |
| Diluted weighted average common shares outstanding | 27,393 | 27,153 | 27,475 | 26,961 |

The accompanying notes to consolidated financial statements are an integral part of these consolidated statements.

## THE CHILDREN'S PLACE RETAIL STORES, INC.
## AND SUBSIDIARIES

## CONSOLIDATED STATEMENTS OF CASH FLOWS
## (Unaudited)
## (In thousands)

| | Thirty-Nine Weeks Ended | |
|---|---|---|
| | October 30, 2004 | November 1, 2003 |
| **CASH FLOWS FROM OPERATING ACTIVITIES:** | | |
| Net income | $ 19,304 | $ 7,782 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Depreciation and amortization | 31,195 | 29,557 |
| Deferred financing fee amortization | 44 | 45 |
| Loss on disposals of property and equipment | 495 | 314 |
| Deferred taxes | 803 | (64) |
| Deferred rent | 1,604 | 1,788 |
| Changes in operating assets and liabilities: | | |
| Accounts receivable | (5,707) | 1,158 |
| Inventories | (46,061) | (19,610) |
| Prepaid expenses and other current assets | (2,880) | (1,394) |
| Other assets | (2,607) | 58 |
| Accounts payable | 5,210 | 3,062 |
| Income taxes payable | (2,754) | 2,788 |
| Accrued expenses, interest and other current liabilities | 5,399 | 6,791 |
| Total adjustments | (15,259) | 24,493 |
| Net cash provided by operating activities | 4,045 | 32,275 |
| **CASH FLOWS FROM INVESTING ACTIVITIES:** | | |
| Property and equipment purchases | (37,164) | (25,642) |
| Net cash used in investing activities | (37,164) | (25,642) |
| **CASH FLOWS FROM FINANCING ACTIVITIES:** | | |
| Exercise of stock options and employee stock purchases | 2,696 | 991 |
| Deferred financing costs | 0 | (175) |
| Borrowings under revolving credit facility | 99,150 | 62,337 |
| Repayments under revolving credit facility | (99,150) | (62,337) |
| Net cash provided by financing activities | 2,696 | 816 |
| Effect of exchange rate changes on cash | 995 | 88 |
| Net decrease in cash and cash equivalents | (29,428) | 7,537 |
| Cash and cash equivalents, beginning of period | 74,772 | 36,645 |
| Cash and cash equivalents, end of period | $ 45,344 | $ 44,182 |
| **OTHER CASH FLOW INFORMATION:** | | |
| Cash paid during the period for interest | $ 18 | $ 237 |
| Cash paid during the period for income taxes | 15,841 | 1,337 |

The accompanying notes to consolidated financial statements are an integral part of these consolidated statements.

## THE CHILDREN'S PLACE RETAIL STORES, INC.
## AND SUBSIDIARIES

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**
**(Unaudited)**

## 1. BASIS OF PRESENTATION

The accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") for interim financial information. Certain information and footnote disclosures required by GAAP for complete financial statements have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission. In the opinion of management, the accompanying unaudited financial statements contain all material adjustments, consisting of normal recurring accruals, necessary to present fairly the Company's financial position, results of operations and cash flows for the periods indicated, and have been prepared in a manner consistent with the audited financial statements as of January 31, 2004. These financial statements should be read in conjunction with the audited financial statements and footnotes for the fiscal year ended January 31, 2004 included in the Company's Annual Report on Form 10-K for the year ended January 31, 2004 filed with the Securities and Exchange Commission. Due to the seasonal nature of the Company's business, the results of operations for the thirty-nine weeks ended October 30, 2004 and November 1, 2003 are not necessarily indicative of operating results for a full fiscal year.

## 2. STOCK BASED COMPENSATION

The Company accounts for its stock option plans and its employee stock purchase plan under the intrinsic value method described in the provisions of Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees". Accordingly, no compensation expense has been recognized for stock-based compensation since the options granted were at prices that equaled or exceeded their estimated fair market value at the date of grant. If compensation expense for the Company's stock options and employee stock purchases issued during the thirteen weeks and thirty-nine weeks ended October 30, 2004 and November 1, 2003 had been determined based on the fair value method of accounting, in accordance with Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation," and the disclosure requirements of SFAS No. 148, "Accounting for Stock-Based Compensation, Transition and Disclosure", the Company's net income would have been adjusted to the pro forma amounts indicated below for the thirteen weeks and thirty-nine weeks ended October 30, 2004 and November 1, 2003, respectively:

| | Thirteen Weeks Ended | | Thirty-Nine Weeks Ended | |
|---|---|---|---|---|
| | October 30, 2004 | November 1, 2003 | October 30, 2004 | November 1, 2003 |
| Net income - (in thousands) | | | | |
| As reported | $ 17,683 | $ 11,612 | $ 19,304 | $ 7,782 |
| Deduct: Total stock-based compensation expense determined under fair value based method for all awards, net of related tax effects | 1,418 | 1,107 | 4,422 | 3,230 |
| Pro forma | $ 16,265 | $ 10,505 | $ 14,882 | $ 4,552 |
| Earnings per share - | | | | |
| Basic - as reported | $ 0.66 | $ 0.44 | $ 0.72 | $ 0.29 |
| Basic - pro forma | $ 0.60 | $ 0.39 | $ 0.55 | $ 0.17 |
| Diluted - as reported | $ 0.65 | $ 0.43 | $ 0.70 | $ 0.29 |
| Diluted - pro forma | $ 0.59 | $ 0.39 | $ 0.54 | $ 0.17 |

**THE CHILDREN'S PLACE RETAIL STORES, INC.**
**AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**
**(Unaudited)**

## 3. NET INCOME PER COMMON SHARE

In accordance with SFAS No. 128, "Earnings Per Share," the following table reconciles net income and share amounts utilized to calculate basic and diluted net income per common share.

| | Thirteen Weeks Ended | | Thirty-Nine Weeks Ended | |
|---|---|---|---|---|
| | October 30, 2004 | November 1, 2003 | October 30, 2004 | November 1, 2003 |
| Net income (in thousands) | $ 17,683 | $ 11,612 | $ 19,304 | $ 7,782 |
| Basic shares | 26,928,437 | 26,640,052 | 26,866,850 | 26,619,629 |
| Dilutive effect of stock options | 465,086 | 513,155 | 608,080 | 341,688 |
| Dilutive shares | 27,393,523 | 27,153,207 | 27,474,930 | 26,961,317 |
| Antidilutive options | 1,510,132 | 747,497 | 1,046,903 | 1,052,252 |

Antidilutive options consist of the weighted average of stock options for the respective periods ended October 30, 2004 and November 1, 2003 that had an exercise price greater than the average market price during the period. Such options are therefore excluded from the computation of diluted shares.

## 4. COMPREHENSIVE INCOME

The following table presents the Company's comprehensive income (in thousands):

| | Thirteen Weeks Ended | | Thirty-Nine Weeks Ended | |
|---|---|---|---|---|
| | October 30, 2004 | November 1, 2003 | October 30, 2004 | November 1, 2003 |
| Net income | $17,683 | $11,612 | $19,304 | $ 7,782 |
| Translation adjustments | 3,025 | 334 | 2,951 | 685 |
| Comprehensive income | $20,708 | $11,946 | $22,255 | $ 8,467 |

## 5. DERIVATIVE INSTRUMENTS

SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," ("SFAS No. 133"), as amended and interpreted, requires that each derivative instrument (including certain derivative instruments embedded in other contracts) be recorded in the balance sheet as either an asset or liability and measured at its fair value. The statement also requires that changes in the derivative's fair value be recognized currently in earnings in either income from continuing operations or accumulated other comprehensive income, depending on whether the derivative qualifies for hedge accounting treatment.

Commencing in the second quarter of 2004, the Company began using foreign currency forward contracts for the specific purpose of reducing the exposure to variability in forecasted cash flows associated primarily with inventory purchases for the Company's Canadian operations. These instruments are not designated as hedges and, in accordance with SFAS No. 133, the changes in fair value are included in current period earnings.

At October 30, 2004, the Company had forward contracts maturing through January 2005 for its Canadian operations to buy $4.3 million U.S. dollars for $5.7 million Canadian dollars. The Company's Canadian operations uses Canadian dollars as its functional currency, but purchases most of its merchandise in U.S. dollars. The Company has recorded an unrealized pre-tax loss of approximately $385,000 and $376,000 in its earnings for the thirteen weeks and thirty-nine weeks ending October 30, 2004, respectively, to record these contracts to their market value. The forward contracts are recorded at their fair market value at October 30, 2004.



## 6. CREDIT FACILITIES

### Wells Fargo Credit Facility

Prior to October 30, 2004, the Company had a credit facility (the "Original Wells Fargo Credit Facility") with Wells Fargo Retail Finance, LLC ("Wells Fargo"). The Original Wells Fargo Credit Facility provided for up to $85 million in borrowings, which included a sublimit of up to $80 million in letters of credit. Wells Fargo acted as the Company's agent bank for a syndicated group of lenders, under this facility. This credit facility also contained provisions to increase borrowings up to $120 million (including a sublimit for letters of credit of $100 million), subject to sufficient collateralization and the syndication of the incremental line of borrowing. The amount that could be borrowed under the credit facility depended on the Company's levels of inventory and accounts receivable. The Original Wells Fargo Credit Facility would have expired in April 2006 and provided for one-year renewal options.

The Original Wells Fargo Credit Facility also contained covenants, which included limitations on the Company's annual capital expenditures, the maintenance of certain levels of excess collateral, and a prohibition on the payment of dividends. Credit extended under the Original Wells Fargo Credit Facility was secured by a first priority security interest in all of the Company's assets, except for assets in Canada.

Noncompliance with these covenants could result in additional fees, could affect the Company's ability to borrow, or could require the Company to repay the outstanding balance. Amounts outstanding under the Original Wells Fargo Credit Facility bore interest at a floating rate equal to the prime rate or, at the Company's option, a LIBOR rate plus a pre-determined spread. The LIBOR spread was 1.50% to 3.00% depending on the Company's level of availability from time to time.

As of October 30, 2004, the Company amended and restated its credit facility with Wells Fargo ("the Amended Loan Agreement"), partly in connection with its acquisition of the Disney Store retail chain (See Footnote 10 – Subsequent Events). The terms of the Amended Loan Agreement are substantially the same as the Original Wells Fargo Credit Facility except the Amended Loan Agreement provides for borrowings up to $130 million (including a sublimit for letters of credit of $100 million) and extends the term of the facility until November 1, 2007 with successive one-year renewal options. In addition, the Amended Loan Agreement provides for a temporary over-advance facility under which the Company will have the right to borrow up to $30 million through December 31, 2004, regardless of the amount of collateral. The Amended Loan Agreement is secured by a first priority security interest in substantially all the assets of the Company and its subsidiaries, other than assets in Canada and assets owned by the Company's subsidiaries that were formed in connection with the acquisition of the Disney Stores business in North America. Amounts outstanding under the Amended Loan Agreement bear interest at a floating rate equal to the prime rate or, at the Company's option, a LIBOR rate plus a pre-determined spread. The LIBOR spread will be 1.50% to 3.00%, depending on the

Company's level of availability from time to time, except that the LIBOR spread for over-advances will be 4%. The Company expects to use borrowings under the Amended Loan Agreement for working capital purposes and to support the acquisition of the Disney Stores.

The Company had no outstanding borrowings under its Amended Loan Agreement as of October 30, 2004 and had letters of credit outstanding of $55.1 million. During the thirty-nine weeks ended October 30, 2004, the Company's borrowings under its credit facility represented overnight borrowings for letters of credit that cleared after business hours. The average balance during the thirty-nine weeks ended October 30, 2004 was approximately $563,000 and the average interest rate was 4.27%. The maximum outstanding letters of credit were $60.1 million during the thirty-nine weeks ended October 30, 2004. Availability under the Amended Loan Agreement as of October 30, 2004 was $74.9 million. As of October 30, 2004, the Company was in compliance with all of its covenants under the Amended Loan Agreement.

As of November 21, 2004, in conjunction with the Company's acquisition of the Disney Stores, the Company entered into a separate credit facility for its new subsidiary which operates this business. In addition, on November 22, 2004, the Company borrowed approximately $53.8 million under the Amended Loan Agreement to satisfy a portion of its payment obligations in connection with the acquisition of the Disney Stores. (see Footnote 10-Subsequent Events)



## 6. CREDIT FACILITIES (continued)

### Toronto Dominion Credit Facility

The Company has a $8.2 million credit facility with Toronto Dominion Bank (the "Toronto Dominion Credit Facility") to support its Canadian subsidiary. As of October 30, 2004, the Toronto Dominion Credit Facility was secured by a standby letter of credit issued under the Amended Loan Agreement with Wells Fargo to permit up to $1.8 million in borrowings. As of October 30, 2004, there were no borrowings and no letters of credit outstanding under the Toronto Dominion Credit Facility. During the thirty-nine weeks ended October 30, 2004, the Company did not borrow under the Toronto Dominion Credit Facility. The Toronto Dominion Bank can demand repayment and cancel the availability of the Toronto Dominion Credit Facility at any time.

## 7. INSURANCE PROCEEDS

During the thirty-nine weeks ended November 1, 2003, the Company received approximately $1.5 million in a partial settlement of its business interruption claim for its World Trade Center store. These proceeds reduced selling, general and administrative expenses on the Company's consolidated statements of income.

## 8. LITIGATION

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

## 9. INCOME TAXES

The Company computes income taxes using the liability method. This standard requires recognition of deferred tax assets and liabilities, measured by enacted rates, attributable to temporary differences between financial statement and income tax basis of assets and liabilities. Temporary differences result primarily from accelerated depreciation and amortization for tax purposes and various accruals and reserves being deductible for future tax periods. The income tax provision recorded for the thirty-nine weeks ended October 30, 2004 reflects the Company's estimated expected annual effective tax rate.

## 10. SUBSEQUENT EVENTS

### Acquisition of The Disney Store

On November 22, 2004 (effective as of November 21, 2004), two subsidiaries of the Company consummated the acquisition of the "Disney Store" chain of retail stores in North America (the "Acquisition"), pursuant to the terms of the Acquisition Agreement dated as of October 19, 2004 (the "Acquisition Agreement"), between such subsidiaries of the Company, as purchasers (the "Purchasers"), and two subsidiaries of The Walt Disney Company, as sellers (the "Sellers"). Pursuant to the terms of the Acquisition Agreement, the Purchasers acquired 100% of the outstanding equity interests in The Disney Store, LLC ("TDS USA") and 100% of the outstanding shares of capital stock of The Disney Store (Canada) Ltd. ("TDS Canada") from the Sellers. As a result of the Acquisition, a total of 313 Disney Stores, consisting of all existing Disney Stores in the United States and Canada, other than "flagship" stores and stores located at Disney theme parks and other Disney properties, along with certain other assets used in the Disney Store business, became owned and operated by subsidiaries of the Company and the lease obligations for all 313 stores and other legal obligations of TDS USA and TDS Canada became obligations of subsidiaries of the Company.

In consideration for the transfer by the Sellers to the Purchasers of the equity interests in TDS USA and TDS Canada, an estimated working capital payment in the amount of $101.4 million became payable to the Sellers in connection with the consummation of the Acquisition. The amount of this working capital payment, which is subject to adjustment, primarily reflected the level of inventory at the Disney Stores for the 2004 holiday season as of November 21, 2004 as well as a reduction in accounts payable prior to consummation of the Acquisition. Of this amount, $45.4 million was paid to the Sellers by the Company and



**10. SUBSEQUENT EVENTS (continued)**

**Acquisition of The Disney Store (continued)**

$40.0 million was paid to the Sellers by TDS USA, as permitted by the Acquisition Agreement, on November 22, 2004. Payment of the remaining $16.0 million is due from The Children's Place Retail Stores, but has been deferred for up to one month in accordance with the Acquisition Agreement. Such amount will bear interest until the date of payment.

Pursuant to a Guaranty and Commitment entered into in connection with the Acquisition (the "Guaranty and Commitment"), the Company invested $50 million into its new subsidiary Hoop Retail Stores, LLC ("Hoop USA"), which merged with TDS USA following the Acquisition, with Hoop USA surviving the merger. Hoop USA now operates the business of the Disney Store in the United States and indirectly owns the entire equity interest in Hoop Canada, Inc. ("Hoop Canada"), the entity that operates the business of the Disney Store in Canada following a merger of TDS Canada into Hoop Canada upon the closing of the Acquisition, with Hoop Canada surviving the merger. Under the terms of the Guaranty and Commitment, the Company is obligated to invest up to an additional $50 million in Hoop USA, as necessary, from time to time in the future to enable Hoop USA and Hoop Canada to comply with their obligations and operate the Disney Store business. Pursuant to the Guaranty and Commitment, the Company also agreed to guarantee the payment and performance by Hoop USA and its Canadian operating subsidiary and certain of their affiliates of their royalty payment and other obligations to TDS Franchising LLC, a subsidiary of The Walt Disney Company, under a License and Conduct of Business Agreement that was entered into in connection with the Acquisition (the "License Agreement"), subject to a maximum liability of The Children's Place Retail Stores of $25 million. In addition, under the License Agreement, until the achievement of certain operating results, Hoop USA is restricted from paying dividends to The Children's Place Retail Stores.

The Company funded its capital commitment for the Acquisition and its portion of the working capital payment partially through cash on hand and partially through short-term borrowings under its recently expanded credit facility under which Wells Fargo serves as agent (described in Footnote 6 – Credit Facilities). TDS USA funded its $40 million portion of the working capital payment, and the issuance of $23.0 million of standby letters of credit to the Sellers as required by the Acquisition Agreement (primarily for the purpose of backing up the Sellers' obligations for merchandise on order and freight services), by drawing upon a newly established credit facility for The Disney Store, which is described below.

Pursuant to the terms of the License Agreement, Hoop USA and Hoop Canada will operate retail stores in the United States and Canada using the "Disney Store" name and such stores will contract to manufacture, source, offer and sell merchandise featuring "Disney-branded" characters, past, present and future. For additional information about the Acquisition and the terms of the Acquisition Agreement and the License Agreement, see the Company's Current Reports on Form 8-K dated October 19, 2004 and November 22, 2004.

**The Disney Store Credit Facility**

In connection with the consummation of the Acquisition, TDS USA and its successor Hoop USA and the subsidiaries of Hoop USA, as guarantors, entered into a Loan and Security Agreement (the "Hoop Loan Agreement") dated as of November 21, 2004 with certain financial institutions and Wells Fargo, as administrative agent, establishing a senior secured credit facility for the Disney Store business. The Hoop Loan Agreement provides for borrowings and letters of credit up to $100 million, subject to the amount of eligible inventory and accounts receivable of Hoop USA from time to time. The term of the facility extends until November 1, 2007. Amounts outstanding under the Hoop Loan Agreement will bear interest at a floating rate equal to the prime rate plus a pre-determined margin or, at Hoop USA's option, the LIBOR rate plus a pre-determined margin. The prime rate margin will be 0.25% and the LIBOR margin will be 2.0% or 2.25%, depending on Hoop USA's level of excess availability from time to time. The Hoop Loan Agreement contains various covenants, including limitations on indebtedness, maintenance of certain levels of excess collateral and restrictions on the payment of dividends and payment of any indebtedness of Hoop USA and Hoop Canada held by the Company. Credit extended under the Hoop Loan Agreement is secured by a first priority security interest in substantially all the assets of Hoop USA and Hoop Canada as well as a pledge of a portion of the equity interests in Hoop Canada. Borrowings and letters of credit under the Hoop Loan Agreement will be used by Hoop USA and its subsidiary Hoop Canada for working capital purposes for the Disney Stores. In addition, a portion of the borrowings under the Hoop Loan Agreement at the time of consummation of the Acquisition were used to satisfy a portion of the payment obligations owed to the Sellers in connection with the Acquisition.

## 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 within the meaning of federal securities laws, which are intended to be covered by the safe harbors created thereby. Those statements include, but may not be limited to, the discussions of the Company's operating and growth strategy. Investors are cautioned that all forward-looking statements involve risks and uncertainties including, without limitation, those set forth under the caption "Risk Factors" in the Business section of the Company's Annual Report on Form 10-K for the year ended January 31, 2004. Although the Company believes that the assumptions underlying the forward-looking statements contained herein are reasonable, any of the assumptions could prove to be inaccurate, and therefore, there can be no assurance that the forward-looking statements included in this Quarterly Report on Form 10-Q will prove to be accurate. In light of the significant uncertainties inherent in the forward-looking statements included herein, the inclusion of such information should not be regarded as a representation by the Company or any other person that the objectives and plans of the Company will be achieved. The Company undertakes no obligation to publicly release any revisions to any forward-looking statements contained herein to reflect events and circumstances occurring 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 January 31, 2004, filed with the Securities and Exchange Commission.*

**Critical Accounting Policies**

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States 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. Actual results could differ from our estimates. The accounting policies that we believe are the most critical to aid in fully understanding and evaluating reported financial results include the following:

**Revenue Recognition** – Sales are recognized upon purchase by customers at our retail stores or when shipped to our customers from our distribution center if the product was purchased via the Internet, net of coupon redemptions and anticipated sales returns. Actual sales return rates have historically been within our expectations and the allowance established. However, in the event that the actual rate of sales returns by customers increased significantly, our operational results could be adversely affected.

Our policy with respect to gift cards is to record revenue as the gift cards are redeemed for merchandise. Prior to their redemption, unredeemed gift cards are recorded as a liability, included within accrued expenses and other current liabilities on the accompanying consolidated balance sheets. We have not reduced our gift card liabilities for gift cards that are not expected to be redeemed.

We offer private label credit card customers a discount on future purchases, once they have made purchases that exceed an annual minimum. We estimate the future discounts to be provided based on prior year history, the number of customers who have earned or are likely to earn the discount and current year sales trends on the private label credit card. We defer a proportionate amount of revenue from customers based on an estimated value of future discounts. We recognize such deferred revenue as future discounts are taken on sales above the annual minimum. This is done by utilizing estimates based upon sales trends and the number of customers who have earned the discount privilege. All deferred revenue is recognized by the end of the fiscal year, as our private label customers must earn the discount privilege on an annual basis, and such privilege expires prior to our fiscal year end. As of October 30, 2004, approximately $705,000 in revenue has been deferred and will be recognized over the remainder of fiscal 2004.

**Inventory Valuation** – Merchandise inventories are stated at the lower of average cost or market, using the retail inventory method. Under the retail inventory method, the valuation of inventories at cost and the resulting gross margins are calculated by applying a cost-to-retail ratio to the retail value of inventories. At any one time, inventories include items that have been marked down to our best estimate of their fair market value. We base our decision to mark down merchandise upon its current rate of sale, the season, age and sell-through of the item. To the extent that our estimates differ from actual results, additional markdowns may have to be recorded, which could reduce our gross profit and operating results. Our success is largely dependent upon our ability to gauge the fashion taste of our customers and provide a well-balanced merchandise assortment that satisfies customer demand. Any inability to provide the proper quantity of appropriate merchandise in a timely manner could increase future markdown rates.

**Impairment of Assets** – We continually evaluate each store's performance and measure the carrying value of each location's fixed assets, principally leasehold improvements and fixtures, versus its projected cash flows. An impairment loss is recorded if the projected future cash flows are insufficient to recapture the net book value of their assets. To the extent our estimates of future cash flows are incorrect, additional impairment charges may be recorded in future periods.

**Litigation** – We are involved in various legal proceedings arising in the normal course of our business. In our opinion, any ultimate liability arising out of such proceedings will not have a material adverse effect on our business.

**Stock Options** – We record no compensation expense on our financial statements for stock-based compensation, since we grant stock options at prices that equal or exceed the fair market value of the related shares at the date of the grant. If, in the future, we elect or are required to adopt fair value accounting for our stock-based compensation, the related compensation charge will adversely impact net income. In addition, increases to our stock price would result in more diluted shares outstanding and reduce our diluted net income per common share.

**Results of Operations**

The following table sets forth, for the periods indicated, selected income statement data expressed as a percentage of net sales:

| | Thirteen Weeks Ended | | Thirty-Nine Weeks Ended | |
|---|---|---|---|---|
| | October 30, 2004 | November 1, 2003 | October 30, 2004 | November 1, 2003 |
| Net sales | 100.0% | 100.0% | 100.0% | 100.0% |
| Cost of sales | 59.4 | 59.1 | 62.0 | 62.4 |
| Gross profit | 40.6 | 40.9 | 38.0 | 37.6 |
| Selling, general and administrative expenses | 26.4 | 27.8 | 28.9 | 30.1 |
| Depreciation and amortization | 3.7 | 4.6 | 4.5 | 5.2 |
| Income before income taxes | 10.5 | 8.5 | 4.6 | 2.3 |
| Provision for income taxes | 4.2 | 3.3 | 1.8 | 0.9 |
| Net income | 6.3% | 5.2% | 2.8% | 1.4% |
| Number of stores, end of period | 734 | 689 | 734 | 689 |

Effective November 21, 2004, we acquired the business of the Disney Stores in the United States and Canada. Accordingly, our future reported results will include the Disney Stores.

**Thirteen Weeks Ended October 30, 2004 (the "Third Quarter 2004") Compared to Thirteen Weeks Ended November 1,2003**
**(the "Third Quarter 2003")**

Net sales increased by $57.2 million, or 26%, to $280.5 million during the Third Quarter 2004 from $223.3 million during the Third Quarter 2003. During the Third Quarter 2004, we opened 19 new stores: 11 stores in the United States, seven stores in Canada and one store in Puerto Rico. Our comparable store sales increased 18% and contributed $37.3 million of our net sales increase in the Third Quarter 2004. Our comparable store sales increase was primarily the result of a 13% increase in the number of comparable store sales transactions and a 4% increase in our average dollar transaction size. Comparable store sales increased 14% during the Third Quarter 2003. Net sales for the 19 new stores, as well as other stores that did not qualify as comparable stores, increased our net sales by $19.9 million.

During the Third Quarter 2004, we achieved double-digit comparable store sales increases across all our geographical regions, departments and store types. Our West, Canada, Southwest and Rocky Mountain regions reported the strongest comparable store sales increases. By department, our accessories and newborn departments achieved the highest comparable store sales increases. Our annual profitability is highly dependent on our sales and gross margin performance during the third and fourth quarters, which represents the back-to-school and holiday selling seasons. During the four weeks ended November 27, 2004, our comparable store sales increased 9% as compared to a 14% comparable store sales increase for the four weeks ended November 29, 2003. We are unable to predict if our current sales trends will continue throughout the remainder of the holiday season.

Gross profit increased by $22.7 million to $114.0 million during the Third Quarter 2004 from $91.3 million during the Third Quarter 2003. As a percentage of net sales, gross profit decreased to 40.6% during the Third Quarter 2004 from 40.9% during the Third Quarter 2003. The decrease in gross profit, as a percentage of net sales, was principally due to a lower initial markup and higher markdowns, production and design costs, partially offset by the leveraging of occupancy costs over a larger sales base. During the Third Quarter 2004, our initial markup was lower by 2.2%, as a percentage of net sales, due to our continuing investment in the quality of our garments and the receipt of a larger proportion of basic merchandise, which carries a lower initial markup. In addition, during the Third Quarter 2004, markdowns and production and design costs were higher by 0.4%, as a percentage of net sales. Due to our favorable sales, occupancy costs decreased 2.3% as a percentage of net sales. During the Third Quarter 2004, we continued our strategic acceleration of merchandise receipts, which we believe provides us with greater flexibility, enhances product flows to our stores and improves floorset execution of new season merchandise.

Selling, general and administrative expenses increased $11.9 million to $74.0 million during the Third Quarter 2004 from $62.1 million during the Third Quarter 2003. Selling, general and administrative expenses decreased to 26.4% of net sales during the Third Quarter 2004 from 27.8% of net sales during the Third Quarter 2003. This decrease, as a percentage of net sales, was due primarily to lower marketing expenses and the leveraging of store payroll, partially offset by higher medical expenses. During the Third Quarter 2004, marketing costs were 1.0% lower as a percentage of net sales than during the Third Quarter 2003, due primarily to lower direct marketing costs. Our direct marketing costs were lower in the Third Quarter 2004 as a result of smaller distributions and lower production costs for our customer mailings. During the Fourth Quarter 2004, we have launched a marketing campaign that includes television advertising in four test markets (including the New York metropolitan area). Due to our strong comparable store sales performance during the Third Quarter 2004, our store payroll expenses were 0.6% lower, as a percentage of net sales, than the Third Quarter 2003. Medical expenses were 0.2% higher, as a percentage of net sales, than the Third Quarter 2003.

Depreciation and amortization amounted to $10.5 million, or 3.7% of net sales, during the Third Quarter 2004, as compared to $10.2 million, or 4.6% of net sales, during the Third Quarter 2003. The increase in depreciation and amortization primarily was a result of increases to our store base. Depreciation and amortization decreased, as a percentage of net sales, as a result of the leveraging over a larger sales base.

Our provision for income taxes were $11.8 million and $7.4 million during the Third Quarter 2004 and the Third Quarter 2003, respectively. Our effective tax rate was 40.1% during the Third Quarter 2004 and 39.0% during the Third Quarter 2003. Our tax rate increased during the Third Quarter 2004 based on our updated analysis of the domestic and foreign components of our effective tax rate.

Our net income in the Third Quarter 2004 increased to $17.7 million from $11.6 million during the Third Quarter 2003, due to the factors discussed above.

**Thirty-Nine Weeks Ended October 30, 2004 Compared to Thirty-Nine Weeks Ended November 1, 2003**

Net sales increased $132.0 million, or 23%, to $695.4 million during the thirty-nine weeks ended October 30, 2004 from $563.4 million during the thirty-nine weeks ended November 1, 2003. During the thirty-nine weeks ended October 30, 2004, we opened 45 stores, including our first two stores in Puerto Rico, and closed two stores. Comparable store sales increased 15% during the thirty-nine weeks ended October 30, 2004, which increased our net sales by $79.3 million. During the thirty-nine weeks ended October 30, 2004, our comparable store sales increase primarily was the result of a 13% increase in the number of comparable store transactions and a 2% increase in our average dollar transaction size. Comparable store sales increased 1% during the thirty-nine weeks ended November 1, 2003. Net sales for the 45 stores opened during the thirty-nine weeks ended October 30, 2004, as well as other stores that did not qualify as comparable stores, contributed $52.7 million of the net sales increase.

During the thirty-nine weeks ended October 30, 2004, we achieved comparable store sales increases across all of our geographical regions, departments and store types. By geography, the West, Canada, Southwest and Rocky Mountain regions were the strongest, while the Northeast region was weakest. Accessories and boys were the best performing departments. Our mall stores were the best performing store type, whereas street locations underperformed compared to results for the overall chain. We are unable to predict if these geographical, department and store type trends will continue in the future.

Gross profit increased by $52.4 million during the thirty-nine weeks ended November 1, 2004 to $264.1 million from $211.7 million during the thirty-nine weeks ended November 1, 2003. As a percentage of net sales, gross profit increased to 38.0% during the thirty-nine weeks ended October 30, 2004 from 37.6% during the thirty-nine weeks ended November 1, 2003. The increase in gross profit, as a percentage of net sales, was principally due to the leveraging of occupancy costs over a larger sales base and lower markdowns, partially offset by a lower initial markup. During the thirty-nine weeks ended October 30, 2004, occupancy costs, as a percentage of net sales, decreased 2.3% as a result of our comparable store sales increase and larger sales base. Markdowns were lower by 1.7%, as a percentage of net sales, during the thirty-nine weeks ended October 30, 2004 as compared to the thirty-nine weeks ended November 1, 2003 due to continued positive customer response to our merchandise, combined with improved techniques to allocate merchandise to our stores. Our initial markup was 3.3% lower, as a percentage of net sales, during the thirty-nine weeks ended October 30, 2004 as compared to the thirty-nine weeks ended November 1, 2003. Our initial markup was lower due to our continuing investment in garment quality and a larger portion of our inventory invested in basic merchandise, which carries a lower initial markup.

Selling, general and administrative expenses increased $31.4 million to $200.9 million during the thirty-nine weeks ended October 30, 2004 from $169.5 million during the thirty-nine weeks ended November 1, 2003. Selling, general and administrative expenses were 28.9% of net sales during the thirty-nine weeks ended October 30, 2004 as compared with 30.1% of net sales during the thirty-nine weeks ended November 1, 2003. As a percentage of net sales, selling, general and administrative expenses decreased primarily due to lower store payroll. Due to our strong comparable store sales performance during the thirty-nine weeks ended October 30, 2004, our store payroll expenses were 0.9% lower, as a percentage of net sales, than the thirty-nine weeks ended November 1, 2003. The remainder of our favorable selling, general and administrative expenses, as a percentage of net sales, resulted from the leveraging of marketing and store expenses, partially offset by higher medical expenses.

Depreciation and amortization amounted to $31.2 million, or 4.5% of net sales, during the thirty-nine weeks ended October 30, 2004, as compared to $29.6 million, or 5.2% of net sales, during the thirty-nine weeks ended November 1, 2003. The increase in depreciation and amortization primarily was a result of a larger store base. As a percentage of net sales, depreciation and amortization decreased as a result of leveraging over a larger sales base.

Our provision for income taxes were $12.9 million and $5.0 million for the thirty-nine weeks ended October 30, 2004 and the thirty-nine weeks ended November 1, 2003, respectively. Our tax rate was 40.0% during the thirty-nine weeks ended October 30, 2004 as compared with 39.0% during the thirty-nine weeks ended November 1, 2003. Our tax rate increased based on our updated analysis of the domestic and foreign components of our effective tax rate.

Due to the factors discussed above, our net income increased to $19.3 million during the thirty-nine weeks ended October 30, 2004 from $7.8 million during the thirty-nine weeks ended November 1, 2003.

**Liquidity and Capital Resources**

**Acquisition of The Disney Store**

On November 22, 2004 (effective as of November 21, 2004), we consummated the acquisition of the "Disney Store" chain of retail stores in North America (the "Acquisition"), pursuant to the terms of the Acquisition Agreement entered into on October 19, 2004 (the "Acquisition Agreement"), between two of our subsidiaries, as purchasers, and two subsidiaries of The Walt Disney Company, as sellers. Pursuant to the terms of the Acquisition Agreement, our subsidiaries acquired 100% of the outstanding equity interests in The Disney Store, LLC ("TDS USA") and 100% of the outstanding shares of capital stock of The Disney Store

(Canada) Ltd. ("TDS Canada") from the sellers. As a result of the Acquisition, a total of 313 Disney Stores, consisting of all existing Disney Stores in the United States and Canada, other than "flagship" stores and stores located at Disney theme parks and other Disney properties, along with certain other assets used in the Disney Store business, became owned and operated by our subsidiaries, and all store lease and other legal obligations of TDS USA and TDS Canada became obligations of our subsidiaries.

In consideration for the transfer by the sellers to our subsidiaries of the equity interests in TDS USA and TDS Canada, an estimated working capital payment in the amount of $101.4 million became payable to the sellers in connection with the consummation of the Acquisition. The amount of this working capital payment, which is subject to adjustment, primarily reflected the level of inventory at the Disney Stores for the 2004 holiday season as of November 21, 2004 as well as a reduction in accounts payable prior to consummation of the Acquisition. Of this amount, $45.4 million was paid by The Children's Place Retail Stores and $40.0 million was paid by TDS USA, as permitted by the Acquisition Agreement, on November 22, 2004. Payment of the remaining $16.0 million is due from The Children's Place Retail Stores, but has been deferred (with interest) for up to one month in accordance with the Acquisition Agreement.

Pursuant to a Guaranty and Commitment entered into in connection with the Acquisition (the "Guaranty and Commitment"), we invested $50 million into our new subsidiary Hoop Retail Stores, LLC ("Hoop USA"), which merged with TDS USA following the Acquisition, with Hoop USA surviving the merger. Hoop USA now operates the business of the Disney Store in the United States and indirectly owns the entire equity interest in the entity that operates the business of the Disney Store in Canada. Under the terms of the Guaranty and Commitment, we are obligated to invest up to an additional $50 million in Hoop USA, as necessary, from time to time in the future to enable Hoop USA and its Canadian operating subsidiary to comply with their obligations and operate the Disney Store business. Pursuant to the Guaranty and Commitment, we also agreed to guarantee the payment and performance by Hoop USA and its Canadian operating subsidiary and certain of their affiliates of their royalty payment and other obligations to TDS Franchising LLC, a subsidiary of The Walt Disney Company, under a License and Conduct of Business Agreement that was entered into in connection with the Acquisition (the "License Agreement"), subject to a maximum guaranty liability of The Children's Place Retail Stores of $25 million. In addition, under the License Agreement, until achievement of certain operating results, Hoop USA is restricted from paying dividends to The Children's Place Retail Stores.

We funded our capital commitment for the Acquisition and our portion of the working capital payment partially through cash on hand and partially through short-term borrowings under our recently expanded credit facility under which Wells Fargo Retail Finance, LLC ("Wells Fargo") serves as agent (described below). TDS USA funded its $40 million portion of the working capital payment, and the issuance of $23.0 million of standby letters of credit to the sellers as required by the Acquisition Agreement (primarily for the purpose of backing up the sellers' obligations for merchandise on order and freight services), by drawing upon a newly established credit facility for The Disney Store (also described below).

**Debt Service/Liquidity**

Prior to the Disney Store acquisition, our primary uses of cash were financing new store openings and providing for working capital, which principally represented the purchase of inventory. Our working capital needs follow a seasonal pattern, peaking during the second and third quarters when inventory is purchased for the back-to-school and holiday selling seasons. We have been able to meet our cash needs principally by using cash on hand, cash flows from operations and seasonal borrowings under our credit facilities. As of October 30, 2004, we had no long-term debt obligations or short-term borrowings. After the Disney Store acquisition, however, we had borrowings under our credit facilities for both The Children's Place and The Disney Stores.

As of October 30, 2004, we amended and restated the credit facility we had with Wells Fargo prior to October 30, 2004 (the "Original Wells Fargo Credit Facility"). The Original Wells Fargo Credit Facility provided for borrowings up to $85 million (including a sublimit for letters of credit of $80 million). The Original Wells Fargo Credit Facility also contained provisions to allow us to increase borrowings up to $120 million (including a sublimit for letters of credit of $100 million), subject to sufficient collateralization and the syndication of the incremental line of borrowing. The amount that could be borrowed under the Wells Fargo Credit Facility depended on our levels of inventory and accounts receivable. Amounts outstanding under the facility bore interest at a floating rate equal to the prime rate or, at our option, a LIBOR rate plus a pre-determined spread. The LIBOR spread was 1.50% to 3.00%, depending on our level of availability from time to time. The Wells Fargo Credit Facility contained covenants, which included limitations on our annual capital expenditures, maintenance of certain levels of excess collateral and a prohibition on the payment of dividends. Credit extended under the Wells Fargo Credit Facility was secured by a first priority security interest in all our assets, except for our assets in Canada.

As of October 30, 2004, we amended and restated our credit facility with Wells Fargo (the "Amended Loan Agreement"), partly in connection with our acquisition of the Disney Store retail chain. The terms of the Amended Loan Agreement are substantially the same as the Original Wells Fargo Credit Facility except the Amended Loan Agreement provides for borrowings up to $130 million (including a sublimit for letters of credit of $100 million) and extends the term of the facility until November 1, 2007 with successive one-year renewal options. In addition, the Amended Loan Agreement provides for a temporary over-advance facility under which we will have the right to borrow up to $30 million through December 31, 2004, regardless of the amount of collateral. The Amended Loan Agreement is secured by a first priority security interest in substantially all of our assets, other than assets in Canada and assets owned by our subsidiaries that were formed in connection with the acquisition of the Disney Stores business in North America. Amounts outstanding under the Amended Loan Agreement bear interest at a floating rate equal to the prime rate or, at our option, a LIBOR rate plus a pre-determined spread. The LIBOR spread will be 1.50% to 3.00%, depending on our level of availability from time to time, except that the LIBOR spread for over-advances will be 4%. We expect to use borrowings under the Amended Loan Agreement for working capital purposes and to support the acquisition of the Disney Stores.

As of October 30, 2004, we had no borrowings under our Amended Loan Agreement and had outstanding letters of credit of $55.1 million. Availability as of October 30, 2004 under the Amended Loan Agreement was $74.9 million. The maximum outstanding letters of credit during the thirty-nine weeks ended October 30, 2004 were $60.1 million. We were in compliance with all of the covenants under the Amended Loan Agreement as of October 30, 2004. Noncompliance with these covenants could result in additional fees, could affect our ability to borrow or could require us to repay the outstanding balance. On November 22, 2004 we borrowed approximately $53.8 million under the Amended Loan Agreement to satisfy a portion of our payment obligations in connection with the acquisition of the Disney Stores.

In connection with our Acquisition of the Disney Stores, TDS USA and its successor Hoop USA and the subsidiaries of Hoop USA, as guarantors, entered into a Loan and Security Agreement (the "Hoop Loan Agreement") dated as of November 21, 2004 with certain financial institutions and Wells Fargo, as administrative agent, establishing a senior secured credit facility for the Disney Store business. The Hoop Loan Agreement provides for borrowings and letters of credit up to $100 million, subject to the amount of eligible inventory and accounts receivable of Hoop USA from time to time. The term of the facility extends until November 1, 2007. Amounts outstanding under the Hoop Loan Agreement will bear interest at a floating rate equal to the prime rate plus a pre-determined margin or, at Hoop USA's option, the LIBOR rate plus a pre-determined margin. The prime rate margin will be 0.25% and the LIBOR margin will be 2.0% or 2.25%, depending on Hoop USA's level of excess availability from time to time. The Hoop Loan Agreement contains various covenants, including limitations on indebtedness, maintenance of certain levels of excess collateral and restrictions on the payment of dividends and payment of any indebtedness of Hoop USA and Hoop Canada held by us. Credit extended under the Hoop Loan Agreement is secured by a first priority security interest in substantially all the assets of Hoop USA and Hoop Canada as well as a pledge of a portion of the equity interests in Hoop Canada. Borrowings and letters of credit under the Hoop Loan Agreement will be used by Hoop USA and its subsidiary Hoop Canada for working capital purposes for the Disney Stores. In addition, a portion of the borrowings under the Hoop Loan Agreement at the time of consummation of our Acquisition of the Disney Stores were used to satisfy a portion of our payment obligations owed to the Sellers. On November 22, 2004, Hoop USA borrowed $40.3 million under the Hoop Loan Agreement, and $23.0 million of standby letters of credit were issued under the Hoop Loan Agreement.

To support our Canadian operations, we have an $8.2 million credit facility with Toronto Dominion Bank, which, as of October 30, 2004, was collateralized by a standby letter of credit obtained under the Wells Fargo Credit Facility to permit up to $1.8 million in borrowings. As of October 30, 2004, we had no borrowings under our Canadian credit facility and had no outstanding letters of credit. During the thirty-nine weeks ended October 30, 2004, we did not utilize our Canadian credit facility.

**Cash Flows/Capital Expenditures**

During the thirty-nine weeks ended October 30, 2004, operating activities provided $4.0 million in cash flow as compared to $32.3 million provided by operating activities during the thirty-nine weeks ended November 1, 2003. Despite higher earnings during the thirty-nine weeks ended October 30, 2004, operating activities generated less cash primarily as a result of increased inventory levels and higher tax payments due to our increased profitability. During the thirty-nine weeks ended October 30, 2004, we strategically accelerated the receipt of our merchandise and correspondingly increased our inventory levels. We believe this strategy has provided us with greater flexibility in reacting to sales trends, enabled us to better manage product flows to our stores and improved our floorset execution of new season merchandise as evidenced by our comparable store sales increase of 15% during the thirty-nine weeks ended October 30, 2004.

Cash flows used in investing activities were $37.2 million and $25.6 million in the thirty-nine weeks ended October 30, 2004 and the thirty-nine weeks ended November 1, 2003, respectively. During the thirty-nine weeks ended October 30, 2004 and the thirty-nine weeks ended November 1, 2003, we opened 45 stores and 49 stores and remodeled six stores and 11 stores, respectively. In anticipation of the Disney Store acquisition, we have made certain capital investments to support our growing businesses. The increase in cash flows used in investing activities reflects increased expenditures for distribution center and information systems initiatives, partially offset by lower new store expenditures reflecting fewer store openings and remodels during the thirty-nine weeks ended October 30, 2004. Capital expenditures also include ongoing store, office and distribution center equipment needs. We anticipate that total capital expenditures for our Children's Place and Disney Store businesses during fiscal 2004 will be approximately $50 million.

As noted previously, we acquired the business of the Disney Stores in the United States and Canada as of November 21, 2004. Accordingly, our future reported results will include the Disney Stores.

In July 2004, we entered into an 11 year lease, with two five-year renewal option periods, for an approximately 525,000 square foot distribution center in South Brunswick Township, New Jersey to support our continued growth. Annual rent under this lease is approximately $2.3 million. We plan to utilize this facility beginning in the second quarter of fiscal 2005. We anticipate it will cost approximately $15 million to install an automated warehouse management system and to renovate this distribution center to meet our needs. In fiscal 2004, we expect to make a cash outlay of approximately $3 million (which is included in our fiscal 2004 capital plans), for this facility. During fiscal 2005, we may enter into lease agreements, to defray a portion of the cash outlay needed for this facility.

Cash flows provided by financing activities were $2.7 million and $0.8 million during the thirty-nine weeks ended October 30, 2004 and thirty-nine weeks ended November 1, 2003, respectively. During the thirty-nine weeks ended October 30, 2004 and the thirty-nine weeks ended November 1, 2003, cash flows provided by financing activities primarily reflected funds received from the exercise of employee stock options and employee stock purchases.

We plan to end fiscal 2004 with 750 Children's Place stores and 308 Disney stores. As of December 8, 2004, we operate 750 Children's Place stores and 313 Disney Stores. During the remainder of fiscal 2004, for The Children's Place business, we plan to open one additional store and close one store. During the thirty-nine weeks ended October 30, 2004, we opened 45 stores and closed two stores. For the Disney Store business, we plan to close 7 stores by the end of fiscal 2004. We believe that cash generated from operations and funds available under our credit facilities will be sufficient to fund our capital and other cash flow requirements for at least the next 12 months. Our ability to meet our capital requirements will depend on our ability to generate cash from operations. In addition, we will consider additional sources of financing to fund our long-term growth.

**Item 3. Quantitative and Qualitative Disclosures about Market Risks.**

In the normal course of business, the Company's 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 and income. The Company utilizes cash from operations and short-term borrowings to fund its working capital and investment needs.

Cash balances are normally invested in short-term financial instruments. Because of the short-term nature of these investments, changes in interest rates would not materially affect the fair value of these financial instruments.

The Company's credit facilities with Wells Fargo provide a source of financing for its working capital requirements. Borrowings under the facilities bear interest at a floating rate equal to the prime rate or, at the Company's option, a LIBOR rate plus a pre-determined spread. As of October 30, 2004, the Company had no borrowings outstanding under its credit facilities. In November 2004, the Company used its credit facilities with Wells Fargo to fund its acquisition of the Disney Stores. The Company borrowed $53.8 million under its Amended Loan Agreement and $40.3 million under its Hoop Loan Agreement. In addition, $23.0 million of standby letters of credit were drawn on the Hoop Loan Agreement, primarily for the purpose of backing up obligations for Disney Store merchandise on order and freight services. The Company expects to utilize its credit facilities to support its working capital needs for its expanded business in the future.

Assets and liabilities outside the United States are primarily located in Canada. The Company's investment in foreign subsidiaries with a functional currency other than the U.S. dollar, are generally considered long-term. The Company has purchased forward contracts to reduce the exposure to variability in currency fluctuations in its Canadian operations, which are not designated as hedges for accounting purposes.

**Item 4. Controls and Procedures.**

(a) Disclosure controls and procedures. As of the end of the Company's most recently completed fiscal quarter covered by this report, the Company carried out an evaluation, with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the Company's disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the "Securities Exchange Act"). Based upon that evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded, as of the end of the period covered by this report, that the Company's disclosure controls and procedures are effective in ensuring that information required by the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms.

(b) Changes in internal controls over financial reporting. There have been no changes in the Company's internal controls over financial reporting that occurred during the Company's most recently completed fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected. Accordingly, our disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the objectives of our disclosure control system are met.

## Part II - Other Information

**Item 1. Legal Proceedings.**

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

**Item 6. Exhibits and Reports on Form 8-K.**

**(a) Exhibits**

| Exhibit No. | Description of Document |
|---|---|
| 2.1* | Acquisition Agreement dated as of October 19, 2004 by and among Disney Enterprises, Inc., Disney Credit Card Services, Inc., Hoop Holdings, LLC and Hoop Canada Holdings, Inc. |

| | |
|---|---|
| 10.3 | Fourth Amended and Restated Loan and Security Agreement dated as of October 30, 2004 by and among The Children's Place Retail Stores, Inc. and each of its subsidiaries that are signatories thereto, as borrowers, the financial institutions named therein, and Wells Fargo Retail Finance, LLC, as agent. |
| 10.4* | License and Conduct of Business Agreement dated as of November 21, 2004 by and among TDS Franchising, LLC, The Disney Store, LLC and The Disney Store (Canada) Ltd. |
| 10.5 | Guaranty and Commitment dated as of November 21, 2004 by The Children's Place Retail Stores, Inc. and Hoop Holdings, LLC in favor of The Disney Store, LLC, The Disney Store (Canada) Ltd. and TDS Franchising, LLC. |
| 10.6 | Loan and Security Agreement dated as of November 21, 2004 between The Disney Store, LLC and Hoop Retail Stores, LLC, as borrowers, Hoop Canada Holdings, Inc., as guarantor, Hoop Canada, Inc. and The Disney Store (Canada) Ltd., as secondary guarantors, the financial institutions named therein, and Wells Fargo Retail Finance, LLC, as agent. |
| 31 | Section 302 Certifications |
| 32 | Section 906 Certifications |

_____

* Confidential treatment requested as to certain portions, which portions are omitted and filed separately with the Securities and Exchange Commission.

**(b) Reports on Form 8-K.**

July 2004 Sales Press Release, dated August 5, 2004.
Second Quarter 2004 Earnings Press Release, dated August 12, 2004.
Entry into a Material Definitive Agreement with The Walt Disney Company, dated October 19, 2004.

**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
RETAIL STORES, INC.

Date: December 9, 2004

By: /s/ Ezra Dabah
Chairman of the Board and
Chief Executive Officer
(Principal Executive Officer)

Date: December 9, 2004

By: /s/ Seth L. Udasin
Vice President and
Chief Financial Officer
(Principal Financial Officer)

**ACQUISITION AGREEMENT**

**dated as of**

**October 19, 2004**

**by and among**

**Disney Enterprises, Inc.,**

**Disney Credit Card Services, Inc.,**

**Hoop Holdings, LLC**

**and**

**Hoop Canada Holdings, Inc.**

# ACQUISITION AGREEMENT

This **ACQUISITION AGREEMENT** (this "**Agreement**") is entered into as of October 19, 2004, by and among DISNEY ENTERPRISES, INC., a Delaware corporation ("**DEI**"), DISNEY CREDIT CARD SERVICES, INC., a California corporation wholly-owned by DEI ("**Seller**"), HOOP HOLDINGS, LLC, a Delaware limited liability company ("**USA Purchaser**"), and HOOP CANADA HOLDINGS, INC., a Delaware corporation ("**Canadian Purchaser**" and, together with USA Purchaser, collectively, "**Buyer**") (DEI and Seller, taken together as one party, and Buyer are sometimes referred to each as a "**party**" and collectively as the "**parties**").

W I T N E S S E T H:

WHEREAS, Seller owns 100% of the issued and outstanding equity ownership interest in The Disney Store, LLC, a California limited liability company ("**TDS USA**"), and DEI owns 100% of the issued and outstanding shares of capital stock of The Disney Store (Canada) Ltd., a corporation incorporated under the laws of the Province of Ontario ("**TDS Canada**" and, together with TDS USA, collectively, the "**Company**");

WHEREAS, the Company is engaged in the operation of a chain of specialty retail stores operated under the "Disney Store" name in the United States and Canada; and

WHEREAS, Buyer desires to acquire substantially all of such chain of retail stores by way of the acquisition (i) by USA Purchaser of all of the outstanding units of membership interests in TDS USA (collectively, the "**Membership Units**") from Seller and (ii) by Canadian Purchaser of all of the outstanding shares of capital stock of TDS Canada (collectively, the "**Shares**") from DEI, and DEI and Seller wish to transfer substantially all of such chain of retail stores by way of the transfer of the Membership Units to USA Purchaser and the Shares to Canadian Purchaser, all in accordance with the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, the parties agree as follows:

## ARTICLE I
## DEFINITIONS

1.1 Definitions. As used in this Agreement, the following defined terms shall have the respective meanings set forth below:

**"Acceptable TDS Canada Section 116 Certificate"** has the meaning specified in Section 3.5.1.

**"Acquired Leases"** means any and all Contracts under which the premises of the Acquired Stores (and related storage space, if any) are leased to TDS USA or TDS Canada.

**"Acquired Stores"** means the specialty retail stores leased and/or operated by TDS USA or TDS Canada under the "*Disney Store*" name on the date that is immediately prior to the Closing and set forth on the Acquired Stores Schedule. For purposes of clarification, the "Acquired Stores" shall exclude (i) Flagship Stores and (ii) Deferred Stores, Non-Transferable Stores and Expired Lease Stores but only from and after the effective date on which such Deferred Stores, Non-Transferable Stores and Expired Lease Stores are removed from the Acquired Stores Schedule in accordance with this Agreement.

**"Acquired Stores Schedule"** means TDS Schedule 1.1(a), which sets forth the Acquired Stores (by store number, location/mall name and state/province), their respective Lease Base Rent Amounts, Lease Percentage Rent Amounts and Lease Sales Amounts, whether the Acquired Store is a Core Store or Non-Core Store, whether the Consent of the Landlord under the related Acquired Lease is required in connection with the transactions contemplated hereby and, if a Consent Required Core Store, the Lease Liability thereof, as such schedule may be amended after the date hereof pursuant to Section 6.7.2 and/or Section 6.7.3.

**"Acquisition Agreement Guarantee"** means the "Guarantee by TCP" attached hereto following the signature page hereof.

**"Action"** means any action, lawsuit, charge, complaint, claim (including a letter authored by an attorney on behalf of his client alleging a Loss), counterclaim, arbitration, order, decree, judgment, investigation or any legal, administrative or Tax proceeding, whether civil or criminal, in law or in equity, or before any arbitrator or Governmental Entity.

**"Adjustment Statement"** has the meaning specified in Section 2.3.2(a).

**"Adjustment Statement Objection"** has the meaning specified in Section 2.3.2(b).

**"Adjustment Threshold"** means Five Hundred Thousand Dollars ($500,000).

**"Affiliate"** means, with respect to any Person, any other natural person or Entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such Person. For the purposes of this definition, the term "control" (including, with correlative meanings, the terms "controlling," "controlled by," and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting Securities, by Contract, or otherwise; provided, that (i) in no event shall Buyer or any of its Affiliates be deemed an Affiliate of DEI or Seller or vice versa, and (ii) for purposes of this Agreement, in no event shall any of the following entities or any of their respective Affiliates be deemed an Affiliate of DEI or Seller: (A) Euro Disney Investments, Inc., EDL S.N.C. Corporation, Euro Disney Associes S.N.C., Euro Disneyland SNC, Euro Disney SCA, Euro Disneyland Participations S.A., Euro Disney S.A., EDL Holding Company, EDL Participations S.A., Centre de Congres Newport S.A.S., Euro Disneyland Imagineering S.a.r.l., Societe de Gerance d'Euro Disneyland SA and any other entity commonly known as "Euro Disney", "Euro Disneyland" or "Disneyland Resort Paris", and (B) Hongkong International Theme Parks Limited, Hong Kong Disneyland Management Limited, and Walt Disney Holdings (Hong Kong) Limited and any other entity commonly known as "Hong Kong Disney", "Hong Kong Disneyland" or "Disneyland Resort Hong Kong".

**"Aggregate Lease Liability"** means the aggregate Lease Liability for all of the Signing Date Acquired Stores that are Consent Required Core Stores.

**"Agreement"** means this Agreement by and among the parties as amended, restated or supplemented from time to time.

**"Ala Moana Store"** means the store located at the Ala Moana Center in Hawaii.

**"Amex"** has the meaning specified in Section 6.10.1.

**"Amex Agreement"** has the meaning specified in Section 6.10.1.

**"Appeal Notice"** has the meaning specified in Section 11.17.4.

**"Appellate Arbitrators"** has the meaning specified in Section 11.17.5(e).

**"Approved Deferred Leases"** has the meaning specified in Section 6.7.3(b).

**"Approved Deferred Store Inventory Amount"** means the amount of Inventory equal to (i) the total number of Approved Deferred Stores as of the Subsequent Closing Date multiplied by (ii) the Per Store Inventory Allocation; provided, that for purposes of the foregoing subparagraph (i), if applicable, the Ala Moana Store and the Caesar's Palace Store shall each be treated as two (2) Stores (such that the Approved Deferred Store Inventory Amount with respect to each such Store shall be equal to twice the Per Store Inventory Allocation).

**"Approved Deferred Store Ordered Inventory Amount"** means the amount of Ordered Inventory equal to (i) the total number of Approved Deferred Stores as of the Subsequent Closing Date multiplied by (ii) the Per Store Ordered Inventory Allocation; provided, that for purposes of the foregoing subparagraph (i), if applicable, the Ala Moana Store and the Caesar's Palace Store shall each be treated as two (2) Stores (such that the Approved Deferred Store Ordered Inventory Amount with respect to each such Store shall be equal to twice the Per Store Ordered Inventory Allocation).

**"Approved Deferred Stores"** means the Stores the premises of which are leased under the Approved Deferred Leases.

**"Approved Deferred Stores Schedule"** means the schedule identifying the Approved Deferred Stores (by store number, location/mall name and state/province).

**"Arbitrable Disputes"** has the meaning specified in Section 11.17.2.

**"Arbitration Administrator"** has the meaning specified in Section 11.17.2.

**"Arbitration Parties"** has the meaning specified in Section 11.17.3.

**"Arbitrator"** has the meaning specified in Section 11.17.5(e).

**"Average Per Store Working Capital Value"** means Thirty-Eight Thousand Four Hundred Seventy-One Dollars ($38,471).

**"Balance Sheet Date"** means June 26, 2004.

**"Banking Institution"** means (i) any national bank or banking institution or trust company organized under the Laws of the United States or any state or territory of the United States or the District of Columbia, the business of which is substantially confined to banking and is supervised by the applicable federal, state or territorial banking commission or similar official; (ii) a savings and loan association, building and loan association, cooperative bank, homestead association or similar institution that is supervised and examined by state or federal authority having supervision over any such institution; or (iii) a company that is organized as an insurance company and whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and that is subject to supervision by the insurance commission or a similar official or agency of a state or territory or the District of Columbia; provided, that, for purposes of this Agreement, any Banking Institution that is owned, leased, licensed, controlled or operated by a Person who would be a Disqualified Person but for subparagraph (7) of the definition of "Disqualified Person" shall be excluded from the definition of "Banking Institution."

**"Bank of Montreal Account"** has the meaning specified in Section 6.11.1(a).

**"Basket"** has the meaning specified in Section 10.4.

**"Business"** means, collectively, all properties and assets used by, all liabilities and obligations incurred by, and all operations and conduct of, the Company in connection with (i) operating the Acquired Stores (including the Deferred Stores), (ii) developing, manufacturing or causing the manufacture of, offering for sale and selling merchandise within the Acquired Stores (including the Deferred Stores), (iii) warehousing and distributing such merchandise to and among the Acquired Stores (including the Deferred Stores), (iv) corporate administration of the foregoing activities, and (v) other comparable activities related to the Acquired Stores (including the Deferred Stores). For purposes of clarification, the "Business" (a) does not include any conduct or operations related to or in connection with the Disney Retained Stores or any other Retained Assets or Retained Liabilities but rather consists solely of the conduct and operation of the business pertaining to the Acquired Stores (including the Deferred Stores) intended to be Transferred to Buyer pursuant to the Membership Unit Acquisition and the Share Acquisition and (b) does not include any Intellectual Property of DEI or its Affiliates, with respect to which any rights granted to Buyer, the Company and/or their Affiliates following the Closing shall be governed solely by the License and Conduct of Business Agreement and, notwithstanding anything to the contrary contained herein, which shall not be, and shall not be deemed to be, Transferred in any manner whatsoever pursuant to this Agreement.

**"Business Day"** means any day except Saturday, Sunday or any day on which banks in the State of California are permitted to be closed.

**"Buyer"** has the meaning specified in the preamble to this Agreement.

**"Buyer Affiliate Securities"** means Securities of any Subsidiary of USA Purchaser, including Canadian Purchaser and, from and after the Closing, the Company and any Subsidiary of the Company, in each case, in whatever form.

**"Buyer Designated Manufacturer"** has the meaning specified in Section 6.2.3(c)(i).

**"Buyer Disqualifying Event"** means (i) a negligent act or omission or willful misconduct of a Person otherwise required to be indemnified under Section 10.2.1 (provided, that, for purposes of clarification, Buyer's conduct of, or failure to conduct, due diligence shall not, as applicable, constitute a negligent act or omission), (ii) any reorganization or change in ownership of Buyer or any of its Affiliates, (iii) any change by Buyer or any of its Affiliates in the accounting basis on which its assets are valued or the accounting basis, method, policy or practice on which its financial statements are prepared, or (iv) any change in GAAP after the Closing Date.

**"Buyer Excess Working Capital Portion"** means the portion of the Estimated Closing Working Capital Adjustment Amount to be paid to Seller pursuant to Section 3.3.1 that is in excess of Fifty Million Dollars ($50,000,000), if applicable.

**"Buyer Initial Working Capital Portion"** means the first Ten Million Dollar ($10,000,000) portion of the Estimated Closing Working Capital Adjustment Amount to be paid to Seller pursuant to Section 3.3.1, if applicable.

**"Buyer Schedules"** means those certain disclosure schedules that have been separately delivered by Buyer to DEI and Seller concurrently with the execution of this Agreement.

**"Buyer's Closing Capitalization Table"** has the meaning specified in Section 6.4.1.

**"Buyer's Estimated Closing Balance Sheet"** has the meaning specified in Section 2.3.2(a).

**"Buyer's Estimated Subsequent Closing Balance Sheet"** has the meaning specified in Section 2.3.2(a).

**"Buyer's Governing Documents"** has the meaning specified in Section 5.1.6.

**"Buyer's Liquidity Plan"** has the meaning specified in Section 6.4.2.

**"Buyer Ordered Inventory"** means the amount of Ordered Inventory equal to (i) the total number of Acquired Stores set forth on the Closing Acquired Stores Schedule multiplied by (ii) the Per Store Ordered Inventory Allocation; provided, that, for purposes of the foregoing subparagraph (i), if applicable, the Ala Moana Store and the Caesar's Palace Store shall each be treated as

two (2) Stores (such that the Buyer Ordered Inventory with respect to each such Store shall be equal to twice the Per Store Ordered Inventory Allocation). Notwithstanding the foregoing, "Buyer Ordered Inventory" shall exclude any such inventory with respect to which a Supporting LC has been issued as of the Closing pursuant to and in accordance with Section 6.11.6 in an amount sufficient to support payment of the entire liability under the issued but undrawn letter of credit under the Trade LC Facility that relates to or covers the inventory that would otherwise be classified as Buyer Ordered Inventory.

**"Buyer Working Capital Amount"** means the Buyer Initial Working Capital Portion plus the Buyer Excess Working Capital Portion, as applicable; provided, that, in the event that USA Purchaser does not make the election provided for in subparagraph (B) of the proviso of Section 3.3.1, and no portion of the Estimated Closing Working Capital Adjustment Amount is paid by the Company, as a Subsidiary of Buyer, then the "Buyer Working Capital Amount" shall be equal to the Estimated Closing Working Capital Adjustment Amount.

**"BVHE Merchandise"** means DVDs, home videos and other home entertainment products acquired by the Company from Buena Vista Home Entertainment.

**"Caesar's Palace Store"** means the Store located at The Forum Shops at Caesar's Palace in Las Vegas, Nevada.

**"Canada Mastercard Agreement"** means the Mastercard Major Merchant Agreement dated October 1, 1998, between Canadian Transferee and Bank of Montreal, and related Bank of Montreal Operation of Business Account Terms and Conditions, to which various Canadian Affiliates of DEI are parties (including TDS Canada).

**"Canada Reincorporation"** has the meaning specified in Section 2.6.2.

**"Canada Reincorporation Date"** has the meaning specified in Section 2.6.2.

**"Canadian Purchaser"** has the meaning specified in the preamble to this Agreement.

**"Canadian Purchaser Securities"** means the Securities of Canadian Purchaser in whatever form.

**"Canadian Transfer"** has the meaning specified in Section 2.1.2.

**"Canadian Transferee"** means The Walt Disney Company (Canada) Ltd., a corporation incorporated under the laws of the Province of Ontario.

**"CCRA"** has the meaning specified in Section 3.5.1.

**"CCRA Letter"** has the meaning specified in Section 3.5.3.

**"Closing"** has the meaning specified in Section 3.1.1.

**"Closing Acquired Stores Schedule"** means the final Acquired Stores Schedule as of the Closing Date reflecting any amendments thereto made pursuant to Section 6.7.2 and/or Section 6.7.3 after the date hereof.

**"Closing Balance Sheet"** has the meaning specified in Section 2.3.1.

**"Closing Date"** means the date of the Closing.

**"Closing Disney Retained Stores Schedule"** means the final Disney Retained Stores Schedule as of the Closing Date reflecting any amendments thereto made pursuant to Section 6.7.2 and/or Section 6.7.3 after the date hereof.

**"Closing Working Capital Baseline"** means (i) the Average Per Store Working Capital Value, multiplied by (ii) the number of Acquired Stores set forth on the Closing Acquired Stores Schedule; provided, that, for purposes of the foregoing subparagraph (ii), if applicable, the Ala Moana Store and the Caesar's Palace Store shall each be treated as two (2) Stores (such that the Closing Working Capital Baseline with respect to each such Store shall be equal to twice the Average Per Store Working Capital Value).

**"COBRA"** means the benefit continuation provisions of Section 4980B of the Code and Section 601 et. seq. of ERISA and the related regulations and published interpretations.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Combined Actual Financial Statements"** has the meaning specified in Section 4.2.1.

**"Combined Working Capital Adjustment Amount"** means the positive or negative amount equal to (i) the Final Closing Working Capital Adjustment Amount plus (ii) the Final Subsequent Closing Working Capital Adjustment Amount.

**"Company"** has the meaning specified in the recitals to this Agreement.

**"Company Assets Schedule"** means Buyer Schedule 1.1, which sets forth certain assets that will be retained by the Company as of the Closing.

**"Company Credit Facility"** means a credit facility of and for the Company, established by Buyer (at its sole cost and expense) on behalf of the Company (as a Subsidiary of Buyer) pursuant to and in accordance with Section 6.11.6, that complies in all respects with the terms and provisions of this Agreement and the License and Conduct of Business Agreement.

**"Company Information Technology"** means the Information Technology set forth on TDS Schedule 4.7.2.

**"Company License Agreement Restriction Agreement"** means any Contract (i) prior to the Closing, to which TDS USA or TDS Canada is a party or (ii) from and after the Closing, to which TDS USA or TDS Canada is a party or would otherwise be bound, in the case of each of subparagraph (i) and (ii) that would materially impair and restrict TDS USA's or TDS Canada's rights under the License and Conduct of Business Agreement.

**"Company Minute Books"** has the meaning specified in Section 4.3.

**"Company Plans"** means Employee Benefit Plans in which Employees participate but in which employees of DEI and its ERISA Affiliates other than the Company do not participate.

**"Company Remodel Plans"** means the plans and designs pursuant to which the Company currently anticipates undertaking Store renovations or remodels, copies of which plans and designs have been made available to Buyer prior to execution of this Agreement (as such plans and designs may be subsequently modified with the approval of DEI and Buyer in their respective sole discretion).

**"Company's Governing Documents"** has the meaning specified in Section 4.1.3(b).

**"Competing Offer"** means any written inquiry, proposal or offer from any Person relating to (i) any direct or indirect acquisition or purchase of (A) all or substantially all of the assets of the Company used in the Business, or (B) any Securities of the Company (other than the transactions contemplated by this Agreement and, for purposes of clarification, other than Securities of any Subsidiary of the Company that does not conduct any portion of the Business) or (ii) any merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company.

**"Competition Act"** means the Competition Act (Canada), as amended, and the related regulations and published interpretations.

**"Complaint"** has the meaning specified in Section 11.17.4.

**"Confidential Information"** has the meaning specified in Section 11.9.

**"Confidentiality Agreement"** means that certain Confidentiality Agreement dated as of August 18, 2003 between TWDC and TCP.

**"Consent"** means any approval, consent, waiver or comparable form of authorization that is required to be obtained from any Person, other than any Governmental Entity, with respect to any Contract of TDS USA or TDS Canada (including, without limitation, the Acquired Leases).

**"Consent Fee"** means any fee, charge or other payment (including, without limitation, payment or reimbursement of costs and expenses (including fees and expenses of attorneys and other professionals)) required by any third party in connection with or as a condition to such third party's grant of any Consent that is required with respect to any Acquired Lease in connection with the transactions contemplated by this Agreement (as indicated on the Acquired Stores Schedule). For purposes of clarification, "Consent Fee" shall not include any additional rent, capital expenditures or other monetary obligations imposed or increased pursuant to the terms of any Lease (including, without limitation, any New Lease or any Acquired Lease or any renewal, extension, amendment or modification thereof) in connection with obtaining any required Consent under such Lease.

**"Consent Required Core Stores"** means, collectively, the Core Stores as to which Consent is required with respect to the applicable Acquired Leases in connection with the transactions contemplated by this Agreement (as indicated on the Acquired Stores Schedule).

**"Continuing Employees"** means (i) all of the Employees listed on TDS Schedule 7.4.1 and (ii) all of the Employees not located at the Corporate Headquarters, in the case of subparagraph (i), as TDS Schedule 7.4.1 may be amended after the date hereof in accordance with Sections 6.3 and 7.4.1.

**"Continuing Employee Expenses"** means salary, bonuses, retention payments and other amounts (including, without limitation, accrued vacation and expense reimbursement) payable to Continuing Employees by the Company or its Affiliates in respect of their employment with the Company for periods ending prior to the Closing Date.

**"Contract"** means any agreement, lease, license, evidence of debt, mortgage, hypothec, charge, deed of trust, note, bond, indenture, security agreement, commitment, instrument, understanding, or other contract, obligation or arrangement of any kind, whether written or oral, including, without limitation, all amendments, renewals, extensions or other modifications thereof.

**"Core Stores"** means the Stores designated as "Core Stores" on the Acquired Stores Schedule or the Deferred Stores Schedule, as applicable.

**"Corporate Headquarters"** means the Company's office facilities located at 101 North Brand Boulevard, Glendale, California, which are leased pursuant to the Corporate Headquarters Lease.

**"Corporate Headquarters Lease"** means that certain Glendale City Center Office Building Lease dated as of June 21, 1991 by and between OTR, an Ohio general partnership, as nominee of The State Teachers Retirement Board of Ohio, and TDS USA, as amended.

**"CPA Firm"** has the meaning specified in Section 2.3.2(b).

**"Current Assets"** means, with respect to any Person or Persons, all assets of such Person or Persons that in accordance with Modified GAAP are properly classified as current assets of the types identified in the balance sheet account descriptions set forth in the Trial Balance (and, for purposes of clarification, "Current Assets" shall exclude any current assets of a type that are not identified in the balance sheet account descriptions set forth in the Trial Balance); provided, that (A) the following items shall be included within the definition of Current Assets (without duplication to the extent already so included) whether or not such items would properly be classified as "Current Assets" in accordance with the first clause of this definition of "Current Assets": (i) Operating Expenses and Continuing Employee Expenses that have been prepaid (other than a prepayment in violation of Section 6.3) as of the date as of which Current Assets are being determined (i.e., such Person or Persons have paid the applicable Operating Expenses and/or Continuing Employee Expenses with respect to a period commencing after the date as of which Current Assets are being determined or in consideration of services that have not been performed as of the date as of which Current Assets are being determined); (ii) Buyer Ordered Inventory, provided, that, if as of the date of determination of the post-Closing adjustment pursuant to Section 2.3.2, any letter of credit issued under a Trade LC Facility in connection with, or as a payment mechanism for, Buyer Ordered Inventory has been cancelled or has expired without being drawn, then the Buyer Ordered Inventory relating to or covered by such letter of credit shall be deducted from the definition of Current Assets to the extent that it was previously included pursuant to this subparagraph (ii) (or, if not previously included in the definition of Current Assets pursuant to this subparagraph (ii), shall not be so included); (iii) Disney Umbrella Freight Services Amounts (for the avoidance of doubt, the Disney Umbrella Freight Services Amounts, including such amounts in respect of Disney Umbrella Freight Services to be provided after the Closing pursuant to Section 6.11.3, shall be estimated for purposes of calculating the Closing Date adjustment pursuant to Section 2.3.1 and shall be subject to a true-up in connection with the calculation of the post-Closing adjustment pursuant to Section 2.3.2); and (iv) the Approved Deferred Store Inventory Amount and the Approved Deferred Store Ordered Inventory Amount (solely for purposes of calculating the Store-Related Assets and Liabilities as of the Subsequent Closing Date); and (B) the following items shall be excluded from the definition of Current Assets whether or not such items would properly be classified as "Current Assets" in accordance with the first clause of this definition of "Current Assets": (i) the DCCS Allocated Inventory and DCCS Allocated Ordered Inventory, (ii) any inventory located in or on the premises of, or in transit to or allocated to, the Flagship Stores, which inventory shall constitute a Retained Asset and which inventory the parties acknowledge is not located in or on the premises of, and is not in transit to, the Distribution Center or any other property of the Business, and (iii) any right to a Tax refund that the Company and/or Buyer (as applicable) would be required to pay to DEI or its Affiliates pursuant to Section 7.1.4.

**"Current Liabilities"** means, with respect to any Person or Persons, all liabilities of such Person or Persons that in accordance with Modified GAAP are properly classified as current liabilities of the types identified in the balance sheet account descriptions set forth in the Trial Balance (and, for purposes of clarification, "Current Liabilities" shall exclude any current liabilities of a type that are not identified in the balance sheet account descriptions set forth in the Trial Balance); provided, that the following items shall be included within the definition of Current Liabilities (without duplication to the extent already so included) whether or not such items would properly be classified as "Current Liabilities" in accordance with the first clause of this definition of "Current Liabilities": (i) unpaid Operating Expenses and unpaid Continuing Employee Expenses that have been accrued or that should have been accrued (e.g., in the case of Operating Expenses, after giving effect to true-up assessments or credits or comparable adjustments by Landlords) as of the date as of which Current Liabilities are being determined; and (ii) amounts classified as "straight line rent" and "deferred rent abatement" in accordance with the Company's past practice and reflected on the balance sheet of the Company as of the date as of which Current Liabilities are being determined.

**"DCCS Allocated Inventory"** means, as of the Closing Date, the amount of Inventory equal to (i) the total number of Deferred Stores and Disney Retained Stores (excluding the Flagship Stores) multiplied by (ii) the Per Store Inventory Allocation; provided, that, for purposes of the foregoing subparagraph (i), the Michigan Avenue Store, the Post Street Store and, if applicable, the Ala Moana Store and the Caesar's Palace Store, shall each be treated as two (2) Stores (such that the DCCS Allocated Inventory with respect to each such Store shall be equal to twice the Per Store Inventory Allocation).

**"DCCS Allocated Ordered Inventory"** means, as of the Closing Date, the amount of Ordered Inventory equal to (i) the total number of Deferred Stores and Disney Retained Stores (excluding the Flagship Stores) multiplied by (ii) the Per Store Ordered Inventory Allocation; provided, that, for purposes of the foregoing subparagraph (i), the Michigan Avenue Store, the Post Street Store and, if applicable, the Ala Moana Store and the Caesar's Palace Store, shall each be treated as two (2) Stores (such that the DCCS Allocated Ordered Inventory with respect to each such Store shall be equal to twice the Per Store Ordered Inventory Allocation).

**"DC Observer"** has the meaning specified in Section 6.11.8.

**"Deferred Item Amount"** means an amount equal to the estimate, determined in good faith by DEI, of the aggregate book value of Disney Dollars, Disney Theme Park Passports and BVHE Merchandise that will be owned by the Company as of the Closing.

**"Deferred Lease Assignment and Assumption Agreement"** means an Assignment and Assumption Agreement by and between Seller and/or Canadian Transferee, on the one hand, and TDS USA and/or TDS Canada, as applicable, on the other hand, in substantially the form attached hereto as Annex A.

**"Deferred Leases"** has the meaning specified in Section 6.7.3(a).

**"Deferred Stores"** means the Stores the premises of which are leased under the Deferred Leases.

**"Deferred Stores Schedule"** means the schedule, prepared as of the Closing Date in accordance with Section 6.7.2 and/or Section 6.7.3, identifying the Deferred Stores (by store number, location/mall name and state/province), their respective Lease Base Rent Amounts, Lease Percentage Rent Amounts and Lease Sales Amounts, and whether the Deferred Store is a Core Store or Non-Core Store.

**"DEI"** has the meaning specified in the preamble to this Agreement.

**"DEI Related Provision"** means, with respect to all Contracts to be entered into by Buyer or its Affiliates (including the Company, as a Subsidiary of Buyer) or any other Person in connection with the Company Credit Facility and/or the Wells Fargo Credit Facility, as applicable, all terms and provisions of such Contracts that relate to or affect in any manner whatsoever the remedies thereunder, the termination thereof or defaults and/or events of default thereunder, or that, as determined by DEI and Seller in their respective business judgment, relate to or affect in any manner this Agreement, the License and Conduct of Business Agreement, any other Related Agreement, the TCP Guaranty and Commitment, the rights or obligations of the parties thereunder or the Intellectual Property of DEI or its Affiliates.

**"Direct Claims"** has the meaning specified in Section 10.4.

**"Disney Branded Property"** has the meaning specified in the License and Conduct of Business Agreement.

**"Disney Competitive Business"** means any business that competes, in whole or in part, directly or indirectly, with (i) the motion picture production, motion picture distribution, television and/or radio programming, television and/or radio network, television and/or radio station, Theme Park, cruise line, hotel, resort or animated character-based consumer products business of DEI or its Affiliates, or (ii) any other media or entertainment business or other material division or portion of the present or future business of DEI or any of its Affiliates not covered by the preceding subparagraph (i); provided, that, a Disney Competitive Business that competes only with a business of DEI or its Affiliates identified in the preceding subparagraph (ii) (and not in the preceding subparagraph (i)) shall not be deemed to constitute a Disney Competitive Business hereunder if, during the most recently completed fiscal year of such Disney Competitive Business, it generated less than One Million Dollars ($1,000,000) of revenues from such competing business.

**"Disney Dollars"** means instruments commonly referred to and known as of the date hereof as "Disney Dollars" that may be purchased from DEI or its Affiliates and used as a method of payment comparable to cash to purchase a variety of products and services at certain venues owned, leased, licensed, controlled and/or operated by DEI or its Affiliates (including the Acquired Stores), any modifications or replacements of the foregoing and any comparable instruments created by DEI or its Affiliates after the date hereof.

**"Disney Information Technology"** means all Information Technology, other than Company Information Technology, that is currently owned, licensed, controlled or used in any manner by TDS USA and/or TDS Canada, which includes, without limitation: (i) Information Technology that is owned, licensed or controlled by TDS USA or TDS Canada by, through, under or in connection with master or global Information Technology Contracts under which DEI or one of its Affiliates other than the Company is the primary licensee and (ii) the Information Technology set forth on TDS Schedule 7.8.

**"Disney Issued Property"** has the meaning specified in Section 6.11.12.

**"Disney Plans"** means Employee Benefit Plans that are sponsored or maintained by DEI or any ERISA Affiliate or to which DEI or any ERISA Affiliate (including the Company) is obligated to contribute, but excluding Company Plans.

**"Disney Property"** has the meaning specified in the License and Conduct of Business Agreement.

**"Disney Retained Leases"** means any and all Contracts under which the premises of the Disney Retained Stores (and related storage space, if any) are leased.

**"Disney Retained Stores"** means the specialty retail stores held, leased and/or operated by TDS USA or TDS Canada under the "*Disney Store*" name prior to the Closing and set forth on the Disney Retained Stores Schedule. For purposes of clarification, the "Disney Retained Stores" shall include (i) the Flagship Stores, (ii) Non-Transferable Stores from and after the effective date on which such Non-Transferable Stores are added to the Disney Retained Stores Schedule in accordance with this Agreement and (iii) Deferred Stores that are not Approved Deferred Stores from and after the Subsequent Closing Date or, if no Subsequent Closing occurs, from and after the expiration of the Subsequent Closing Period.

**"Disney Retained Stores Schedule"** means TDS Schedule 1.1(b), which sets forth the Disney Retained Stores (by store number, location/mall name and state/province), as such schedule may be amended after the date hereof pursuant to Section 6.7.2 and/or Section 6.7.3.

**"Disney Supply Chain Arrangements"** means all Contracts between DEI or any of its Affiliates (other than TDS USA or TDS Canada), on the one hand, and third party commercial freight carriers and commercial handlers of freight, whereby the Company, participating as an Affiliate and/or Subsidiary of DEI, obtains services relating to the transportation of merchandise of the Company sourced from the Company's manufacturers or vendors, from such manufacturers or vendors to the Distribution Center or the Stores. By way of example, such arrangements shall include, without limitation, import consolidation, ocean vessel/railway freight, parcel delivery, trucking transportation and FedEx.

**"Disney Theme Park Passports"** means general admission tickets and passes and other admission media (i) for the entertainment, recreation and lodging complex located in Anaheim, California, known as DISNEYLAND® Resort, one of the principal features of which is the operation of two (2) separately gated theme and amusement parks known as DISNEYLAND® park and DISNEY'S CALIFORNIA ADVENTURE™ theme park and (ii) for the entertainment, recreation and lodging complex located in Orange County and Osceola County, Florida, known as the WALT DISNEY WORLD® Resort, one of the principal features of which is the operation of four (4) separately gated theme and amusement parks known as MAGIC KINGDOM® Park, EPCOT®, Disney-MGM Studios and DISNEY'S ANIMAL KINGDOM® Theme Park, provided that this subparagraph (ii) is limited solely to such general admission tickets and passes and other admission media that are sold by Stores located in Canada.

**"Disney Umbrella Freight Services"** means those freight services provided to or used by the Company pursuant to any of the Disney Supply Chain Arrangements, whether prior to the Closing or following the Closing in accordance with Section 6.11.3.

**"Disney Umbrella Freight Services Amounts"** means any amounts incurred by DEI or its Affiliates (including the Company) in respect of Disney Umbrella Freight Services provided to the Company on or prior to the Closing Date that remain unpaid as of the Closing Date and any amounts to be incurred by DEI or its Affiliates in respect of Disney Umbrella Freight Services to be provided to the Company following the Closing Date pursuant to Section 6.11.3; provided, that, Disney Umbrella Freight Services Amounts shall exclude any such amounts in respect of which a Supporting LC has been issued as of the Closing pursuant to and in accordance with Section 6.11.6.

**"Disqualified Person"** means (i) any Person or group of Persons who (by itself or through its Affiliates) owns, leases, licenses, operates or otherwise engages in, in whole or in part, directly or indirectly, a Disney Competitive Business; (ii) any Person or group of Persons who does not possess the requisite experience or expertise in the business of retail sales of consumer merchandise to enable such Person to operate the Acquired Stores and the related online retail store in the manner contemplated and required by the License and Conduct of Business Agreement; (iii) any Person or group of Persons whose financial condition, results of operations, sources of liquidity and/or prospects are insufficient or inadequate to enable such Person to operate the Acquired Stores and the related online retail store in accordance with, and to fulfill its other obligations under, the License and Conduct of Business Agreement, the TCP Guaranty and Commitment and any other Contracts entered into in connection therewith; or (iv) any Person or group of Persons (together with its Affiliates) whose association with the Business, the Acquired Stores and the related online retail store, Buyer, TCP, DEI, Seller or their respective Affiliates, businesses, assets or properties as a result of the ownership of USA Purchaser Securities, Buyer Affiliate Securities, TCP Securities or TCP Affiliate Securities, or as a source or provider of liquidity under Buyer's Liquidity Plan (a) may, as determined by DEI and Seller in their respective business judgment, be expected to violate, constitute a default under or breach in any material respect, or, even if not constituting an actual violation, default or breach, may be expected to materially conflict with or impair the rights, benefits or value accruing to Buyer, TCP, DEI, Seller or their respective Affiliates under, any material Contract to which any of Buyer, TCP, DEI, Seller or their respective Affiliates is a party or under which any of their properties or assets are bound, or (b) may, as determined by DEI and Seller in their respective sole discretion, be expected to be injurious to, adversely impact or be inconsistent with, in any material respect, the image, reputation, appearance or quality of, or may impair or adversely impact, in any material respect, the goodwill associated with, Buyer, TCP, DEI, Seller or their respective Affiliates or any Intellectual Property of DEI, Seller or their respective Affiliates; provided, that:

(1) a Person or group of Persons that, together with its Affiliates taken as a whole, either (x) is engaged principally in the business of retail sales of consumer merchandise and does not offer character-based consumer merchandise in more than fifteen percent (15%) of the aggregate retail merchandising space (in square feet) that is open to the public (i.e., excluding stock rooms, restrooms and other non-public or non-retail space) within any store or facility owned, leased, licensed, controlled or operated by such Person or group of Persons or (y) engages in a Disney Competitive Business in no manner whatsoever other than the ownership of no more than five percent (5%) of the voting securities of a public company that is engaged in a Disney Competitive Business, shall not be deemed to be engaged in a Disney Competitive Business under the preceding subparagraph (i);

(2) with respect to the condition under the preceding subparagraph (ii) pertaining to the possession of the requisite experience or expertise in the business of retail sales of consumer merchandise, (A) in the case of the ownership of TCP Securities or TCP Affiliate Securities, the absence of such experience and expertise shall only make the owner of such TCP Securities or TCP Affiliate Securities a Disqualified Person if such owner is or becomes the Largest TCP Stockholder, the Second Largest TCP Stockholder, the Largest TCP Affiliate Stockholder or the Second Largest TCP Affiliate Stockholder, (B) a Person or group of Persons shall be deemed to have such experience and expertise if the aggregate revenues of such Person or group of Persons, together with its Affiliates taken as a whole, during its most recently completed fiscal year prior to the date of determination hereunder, either (x) were at least fifty percent (50%) comprised of retail sales of consumer merchandise and included at least Five Hundred Million Dollars ($500,000,000) of retail sales of consumer merchandise or (y) included at least One Billion Dollars ($1,000,000,000) of retail sales of consumer merchandise, and (C) a private equity fund that is engaged in the business of creating, maintaining and managing a diversified portfolio of investments shall be deemed to have such experience and expertise if, as of the date of determination hereunder, it had at least fifty percent (50%) or more of its aggregate funds under management invested in

Persons or groups of Persons meeting the requirements contained in either of the preceding subparagraphs (x) or (y) of the preceding subparagraph (B);

(3) the preceding subparagraph (iii) shall not apply with respect to a Person (or group of Persons) owning TCP Securities or TCP Affiliate Securities but not Buyer Securities or Buyer Affiliate Securities;

(4) for purposes of the preceding subparagraph (iv)(a), a Contract shall be considered "material" if it is material in either a quantitative manner (e.g., constituting more than two percent (2%) of a Person's revenues or cash flows from operations) or a qualitative manner (e.g., impacting more than one business unit or division of a Person, the subject of material media or consumer attention, a source of brand prestige or favorable brand association, a basis for attracting other business or alliances, a long-term or long-standing arrangement, or other comparable qualitative factors);

(5) for purposes of the preceding subparagraph (iv)(b), DEI and Seller acknowledge and agree that, in making their determination in their respective sole discretion thereunder, they shall not use the criteria set forth in such subparagraph as a subterfuge to disguise an ulterior reason for determining that a Person is a "Disqualified Person," but rather DEI and Seller shall base their determination thereunder solely on the criteria set forth in such subparagraph to assess whether the Person is appropriate for association with a family and children's entertainment brand such as "Disney," which would exclude, by way of example and without limitation, businesses that are associated with, relate to or promote tobacco, alcohol, firearms, pornography, drugs, violence or crime (e.g., certain videogames) or gambling;

(6) no Mutual Fund, Pension Fund or Eligible Investment Fund shall be or be deemed to be a "Disqualified Person";

(7) a Banking Institution's ownership of debt Securities (including, without limitation, notes, bonds, debentures or other similar debt instruments) of TCP, Buyer or any of their respective Subsidiaries and, following the Closing, the Company or any of its Subsidiaries, shall not be considered in determining whether such Banking Institution is a "Disqualified Person"; and

(8) for purposes of this Agreement only, the following Persons shall not be, and shall not be deemed to be, a "Disqualified Person": (i) Wells Fargo, (ii) any Affiliates of Wells Fargo that are Banking Institutions and (iii) any Banking Institutions that participate in a loan or credit facility with Wells Fargo, or with any Affiliates of Wells Fargo that are Banking Institutions, by or through syndication of such loan or credit facility or any other customary and comparable arrangement.

"**Distribution Center**" means the Company's distribution center located in Memphis, Tennessee.

**"DLMI"** has the meaning specified in Section 6.9.1.

**"Draft Post-Closing Merchandise Plan"** has the meaning specified in Section 6.2.3(a).

**"DTR License"** means a direct-to-retail license that authorizes the retailer licensee thereunder to manufacture, or cause to be manufactured on its behalf, consumer products for sale by such retailer licensee, bearing, featuring or incorporating Disney Branded Properties, subject to the terms and conditions of such license.

**"DWS"** has the meaning specified in Section 6.9.1.

**"El Capitan Store"** means the Disney Retained Store located at 6838 Hollywood Boulevard, Los Angeles, California.

**"Eligible Investment Fund"** means any Person that is an "investment company" within the meaning of the Investment Company Act of 1940 and the rules and regulations promulgated thereunder, but only if and for so long as such Person's investment in USA Purchaser Securities, Buyer Affiliate Securities, TCP Securities or TCP Affiliate Securities is held solely for investment purposes (as a passive investor) and not for the purpose, or with the effect, of changing or influencing the control, management or policies of Buyer, any Subsidiary of Buyer, TCP or such TCP Affiliate or as a participant in any transaction having that purpose or effect; provided, that, for purposes of this Agreement, any Eligible Investment Fund that is sponsored, established, administered, issued, controlled, owned or operated by a Person who would be a Disqualified Person but for subparagraph (6) of the definition of "Disqualified Person" shall be excluded from the definition of "Eligible Investment Fund."

**"Emergency Arbitrator"** has the meaning specified in Section 11.17.7.

**"Employee Benefit Plan"** means (i) any employee benefit plan within the meaning of Section 3(3) of ERISA, (ii) any similar employment, consulting, severance agreement, contract, commitment, program or other arrangement or policy (whether written or oral) providing for insurance coverage (including self-insured arrangements), workers' compensation, disability benefits, supplemental unemployment benefits, vacation benefits, fringe benefits, retirement benefits, life, health or accident benefits (including, without limitation, any "voluntary employees' beneficiary association" as defined in Section 501(c)(9) of the Code providing for the same or other benefits), or profit-sharing, deferred compensation, bonuses, stock options, stock appreciation rights or other stock-based awards, or other forms of incentive compensation or post-retirement insurance, compensation or benefits, (iii) any Pension Fund, or (iv) any Multiemployer Plan.

"**Employee Indemnification Agreement**" means an agreement dated August 27, 2004, between DEI and TCP pertaining to the issuance of letters by TCP or its Affiliates to certain Employees pertaining to offers of continuing employment of such Employees by the Company following the Closing and certain indemnification obligations of TCP in connection therewith.

"**Employee Offer Letters**" means the letters issued by TCP or its Affiliates to certain Employees pursuant to the Employee Indemnification Agreement.

**"Employees"** means all employees of the Company, including, without limitation, those employed in connection with the operation of the Business and those working in, assigned to or responsible for the oversight or management of (i.e. a district or general manager) the Deferred Stores and the Disney Retained Stores, other than those employees located in the Flagship Stores and at the Distribution Center.

**"Employment Contracts"** means all material written employment, consulting or independent contractor Contracts relating primarily to the Business, including, without limitation, any written retention agreements entered into in connection with the Business.

**"Encumbrance"** means any easement, encumbrance, lease, security interest, lien, hypothec, charge, pledge, or comparable restriction, except for any restrictions on transfer generally arising under any applicable federal, state or provincial securities law.

**"Entity"** means any corporation, partnership, limited partnership, limited liability company, trust or other form of legal entity.

**"Environmental Requirements"** means all federal, state, provincial and local government or agency Laws relating to pollution or protection of human health and safety or the environment (including air, surface water, ground water, land surface and subsurface strata), including Laws relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation or handling of Hazardous Substances.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended, and the related regulations and published interpretations.

**"ERISA Affiliate"** means TDS USA, TDS Canada and all trades or businesses (whether or not incorporated) that are members of a group of which DEI, Seller, TDS USA or TDS Canada is a member and that are (i) a "controlled group" within the meaning of Section 414(b) of the Code, (ii) a group "under common control" within the meaning of Section 414(c) of the Code, or (iii) an "affiliated service group" within the meaning of Section 414(m) or (o) of the Code.

**"Escrow Agent"** means Deutsche Bank or such other firm as DEI or Seller shall select in its respective sole discretion.

**"Estimated Closing Working Capital"** means the amount, estimated in accordance with Section 2.3.1, equal to the sum of all Current Assets reflected on the Closing Balance Sheet minus the sum of all Current Liabilities reflected on the Closing Balance Sheet.

**"Estimated Closing Working Capital Adjustment Amount"** means the positive or negative amount equal to (i) the Estimated Closing Working Capital minus (ii) the Closing Working Capital Baseline.

**"Estimated Subsequent Closing Working Capital"** means the amount, estimated in accordance with Section 6.7.3(c), equal to the sum of all Current Assets reflected on the Subsequent Closing Balance Sheet minus the sum of all Current Liabilities reflected on the Subsequent Closing Balance Sheet.

**"Estimated Subsequent Closing Working Capital Adjustment Amount"** means the positive or negative amount equal to (i) the Estimated Subsequent Closing Working Capital minus (ii) the Subsequent Closing Working Capital Baseline.

**"Excess Amount"** has the meaning specified in Section 3.1.1.

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

**"Existing DTR Licenses"** has the meaning specified in the License and Conduct of Business Agreement.

**"Existing Environmental Requirements"** means those applicable provisions of any Environmental Requirements relating to the Business that are both in effect and required to be met by the Company prior to the Closing Date.

**"Existing Restricted Name Agreements"** has the meaning specified in the License and Conduct of Business Agreement.

**"Expired Lease Stores"** has the meaning specified in Section 6.7.2(a).

**"Extension Date"** has the meaning specified in Section 7.4.4.

**"Final Allocation Schedule"** has the meaning specified in Section 2.4.

**"Final Canada Purchase Price"** has the meaning specified in Section 2.3.2(d).

**"Final Closing Balance Sheet"** has the meaning specified in Section 2.3.2(b).

**"Final Closing Working Capital"** means the sum of all Current Assets reflected on the Final Closing Balance Sheet minus the sum of all Current Liabilities reflected on the Final Closing Balance Sheet.

**"Final Closing Working Capital Adjustment Amount"** means the positive or negative amount equal to (i) the Final Closing Working Capital minus (ii) the Closing Working Capital Baseline.

**"Final Post-Closing Merchandise Plan"** has the meaning specified in Section 6.2.3.

**"Final Subsequent Closing Balance Sheet"** has the meaning specified in Section 2.3.2(b).

**"Final Subsequent Closing Working Capital"** means the sum of all Current Assets reflected on the Final Subsequent Closing Balance Sheet minus the sum of all Current Liabilities reflected on the Final Subsequent Closing Balance Sheet.

**"Final Subsequent Closing Working Capital Adjustment Amount"** means the positive or negative amount equal to (i) the Final Subsequent Closing Working Capital minus (ii) the Subsequent Closing Working Capital Baseline.

**"Final USA Purchase Price"** has the meaning specified in Section 2.3.2(d).

**"Final Working Capital Adjustment Amount"** has the meaning specified in Section 2.3.2(b).

**"Financial Statements"** has the meaning specified in Section 4.2.1.

**"Fiscal Year 2003"** means the twelve (12) months ended September 27, 2003.

**"Flagship Stores"** means the Disney Retained Stores located at (a) 711 Fifth Avenue, New York, New York, and (b) 500 South Buena Vista Street, Burbank, California (Disney Studio lot).

**"Freight Services Termination Date"** has the meaning specified in Section 6.11.3.

**"Fundamental Representations"** means those representations and warranties of (i) DEI and Seller contained in Sections 4.1, 4.4, 4.8.1 and 4.14 and (ii) Buyer contained in Sections 5.1, 5.2.1, 5.4, 5.5 and 5.6.

**"GAAP"** means generally accepted accounting principles in the United States, as in effect from time to time, consistently applied. Where more than one alternative treatment is permitted by GAAP as of any date, GAAP shall be deemed to refer, as of such date, to the treatment actually utilized by the Company on a consistent basis prior to the Closing.

**"Governmental Entity"** means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state, provincial or local, domestic or foreign.

**"Guarantor"** has the meaning specified in the Acquisition Agreement Guarantee.

**"Hart-Scott-Rodino Act"** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the related regulations and published interpretations.

**"Hazardous Substances"** means substances that are defined or listed in, or otherwise classified under, any applicable Laws as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances," or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitibility, corrosivity, reactivity, carcinogenicity, reproductive toxicity or "EP toxicity," and petroleum.

**"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, as amended, and the related regulations and published interpretations.

**"Income Tax Act (Canada)"** means the Income Tax Act (Canada), as amended, and the regulations thereto.

**"Indebtedness"** of any Person means, without duplication, (i) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (including, without limitation, reimbursement and all other obligations with respect to surety bonds, letters of credit and bankers' acceptances, whether or not matured, but not including obligations to trade creditors incurred in the ordinary course of business), (ii) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments, (iii) all indebtedness of such Person created or arising under any conditional sale or other title retention agreements with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (iv) all capital lease obligations of such Person, (v) all Indebtedness of other Persons guaranteed by such Person, (vi) all Indebtedness referred to in clause (i), (ii), (iii), (iv) or (v) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon or in property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, (vii) any hedging obligations with respect to the Indebtedness referred to in clause (i), (ii), (iii), (iv), (v), or (vi) above and (viii) any interest on or fees or costs with respect to the Indebtedness referred to in clause (i), (ii), (iii), (iv), (v), (vi) or (vii).

**"Indemnified Actions"** means (i) those Actions set forth on TDS Schedule 4.9, (ii) any Actions asserted against either TDS USA or TDS Canada prior to the Closing Date, and (iii) any Actions asserted against either TDS USA or TDS Canada within eighteen (18) months following the Closing Date that arise directly from and relate solely to sales of merchandise by the Company prior to, or other circumstances or events existing or occurring prior to, the Closing Date.

**"Indemnified Party"** has the meaning specified in Section 10.3.1.

**"Indemnifying Party"** has the meaning specified in Section 10.3.1.

**"Information Technology"** means hardware, software and/or other technology constituting part of any digital or electronic information system, together with all services and Contracts related thereto.

**"Initial Allocation Schedule"** has the meaning specified in Section 2.4.

**"Initial Canada Purchase Price"** has the meaning specified in Section 2.3.1.

**"Initial Purchase Price"** means the Estimated Closing Working Capital Adjustment Amount paid by Buyer pursuant to Section 3.3.1, if any.

**"Initial USA Purchase Price"** has the meaning specified in Section 2.3.1.

**"Intellectual Property"** means (i) all patents, patent applications, patent applications under review, and potentially patentable ideas, (ii) all trademarks, names, brands, symbols, logos, characters, industrial designs, merchandise designs, merchandise tools (i.e., molds, dies, etc.) and service marks, all registrations and applications relating to the foregoing, and the goodwill associated therewith and symbolized thereby, (iii) all mask work rights, copyrights, copyright registrations, moral rights and works of authorship, (iv) all Internet domain names and web sites, (v) all work product and inventions (whether or not patented or patentable), and (vi) any and all other comparable proprietary information, designations and intellectual property rights, including, without limitation, remedies against infringements thereof and rights of protection of interest therein under the Laws of all jurisdictions.

**"Intellectual Property and Technology Assignment"** means an Intellectual Property and Technology Assignment by TDS USA and TDS Canada, in substantially the form attached hereto as Annex B.

**"Intercompany Agreements and Arrangements"** means all Contracts between TDS USA or TDS Canada, on the one hand, and DEI or any of its Affiliates (other than TDS USA or TDS Canada), on the other hand, including, without limitation, any such Contracts with respect to administration and support services, Intellectual Property, intercompany loans of a type reflected as "intercompany payables" or "intercompany receivables" on the balance sheets for TDS USA and/or TDS Canada in accordance with past business practice, tax sharing, payroll, product sourcing, supply chain, Information Technology, employee benefits and benefits administration, legal, accounting, treasury, insurance and strategic planning; provided, that, "Intercompany Agreements and Arrangements" shall exclude the following Contracts: (i) the Revolving Credit Agreement (which is a Retained Asset), (ii) the Pre-Closing Transaction Contracts and (iii) any trade payables in the ordinary course of business (e.g., trade payables for BVHE Merchandise) owed by the Company to DEI or any of its Affiliates (other than the Company) of a type that have not been previously treated as "intercompany payables". The "Intercompany Agreements and Arrangements" shall include, without limitation, the agreements and arrangements set forth on TDS Schedule 1.1(c).

**"Inventory"** means all inventory owned by the Company (including merchandise inventory) as of the Closing Date, including, without limitation, any such inventory (i) located in or on the premises of any Store (or in any storage facility located at or near a Store), (ii) located in or on the premises of the Distribution Center or in or on the premises of the Company's third-party Canadian distributor, (iii) in transit to the Stores from either of the two (2) locations identified in the preceding subparagraph (ii), or (iv) paid for and in transit from the manufacturer or sourcing agent for such inventory to either of the two (2) locations identified in the preceding subparagraph (ii). For purposes of clarification, the parties hereby agree and acknowledge that "Inventory" shall exclude any (i) inventory located in or on the premises of, or in transit to or acquired for, the Flagship Stores and (ii) Ordered Inventory.

**"Investment Canada Act"** means the Investment Canada Act, as amended, and the related regulations and published interpretations.

**"IRS"** means the Internal Revenue Service or any successor entity.

**"June 2004 Working Capital Statement"** means a statement setting forth the Estimated Closing Working Capital and the Estimated Closing Working Capital Adjustment Amount, each based on the Pro Forma Balance Sheet and calculated in good faith by DEI and Seller as if the Closing Date had occurred on June 26, 2004, which statement is included in Schedule 4.2.1.

**"Key Employees"** means (i) Employees listed on TDS Schedule 7.4.1 holding titles of, or more senior than, vice president and (ii) all Continuing Employees not located at the Corporate Headquarters who are district managers or general managers of the Acquired Stores, in the case of subparagraph (i), as TDS Schedule 7.4.1 may be amended after the date hereof in accordance with Sections 6.3 and 7.4.1.

**"Knowledge"** means the actual knowledge of the applicable Person (if such Person is a natural person) or the actual knowledge of any executive officer of the applicable Person (if such Person is an Entity) as of the date specified; provided, that (i) with respect to DEI and Seller, "Knowledge" means the actual knowledge of any of James Fielding, Steve Finney, Kay Murfin and Mark Rodriguez and (ii) with respect to Buyer, "Knowledge" means the actual knowledge of any of Steve Balasiano, Mario Ciampi, Ezra Dabah, Neal Goldberg and Seth Udasin.

**"Landlord"** means the party that, as of the Closing, holds the landlord's or lessor's interest in a Lease.

**"Largest TCP Affiliate Stockholder"** means, with respect to each Affiliate of TCP (other than Buyer and Buyer's Subsidiaries), the Person or group of Persons whose beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of voting TCP Affiliate Securities of such Affiliate of TCP entitles it to the largest vote in the election of the board of directors (or comparable governing body) of such Affiliate of TCP among all holders of TCP Affiliate Securities of such Affiliate of TCP.

**"Largest TCP Stockholder"** means the Person or group of Persons whose beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of voting TCP Securities entitles it to the largest vote in the election of TCP's board of directors (or comparable governing body) among all holders of TCP Securities.

**"Law"**or **"Laws"** means any law, statute, order, decree, judgment, rule, regulation, code, administrative requirement, ordinance or other pronouncement of any Governmental Entity or having the effect of law.

**"Lease"** means any Acquired Lease or Disney Retained Lease (including any Deferred Lease or Approved Deferred Lease) and "Leases" means, collectively, the Acquired Leases and the Disney Retained Leases (including the Deferred Leases and the Approved Deferred Leases).

**"Lease Base Rent Amounts"** means, with respect to a particular Store, an amount equal to (i) the monthly base rent (or comparable payment if designated by a different name) paid by TDS USA or TDS Canada, as applicable, pursuant to the Lease related to such Store for the month of May 2004, multiplied by (ii) twelve (12), which Lease Base Rent Amounts are set forth opposite each Store on the Acquired Stores Schedule.

**"Lease Liability"** means, with respect to any Consent Required Core Store, the aggregate amount of outstanding minimum rent liability under the Lease related to such Consent Required Core Store as of October 2, 2004, as set forth opposite such Consent Required Core Store on the Acquired Stores Schedule.

**"Lease Percentage Rent Amounts"** means, with respect to a particular Store, the aggregate amount of percentage rent (or comparable payment if designated by a different name) that would be required pursuant to the Lease based on the percentage rent formula (or comparable formula if designated by a different name) in effect on May 31, 2004, calculated using the Lease Sales Amount for such Store, which Lease Percentage Rent Amounts are set forth opposite each Store on the Acquired Stores Schedule.

**"Lease Sales Amounts"** means, with respect to a particular Store, the aggregate amount of all revenues generated from all merchandise sales in such Store for Fiscal Year 2003, excluding all relevant and permitted exclusions pursuant to the gross sales/percentage rent provision of the Lease for the applicable Store, which Lease Sales Amounts are set forth opposite each Store on the Acquired Stores Schedule.

**"Li & Fung"** has the meaning specified in Section 6.9.1.

**"Li & Fung Agreement"** has the meaning specified in Section 6.9.1.

**"License and Conduct of Business Agreement"** means the License and Conduct of Business Agreement by and among TDS Franchising, TDS USA and TDS Canada (including the limited guarantee by DWS of the obligations of TDS Franchising thereunder), in substantially the form attached hereto as Annex G.

**"License Encumbrance Agreements"** has the meaning specified in the License and Conduct of Business Agreement.

**"Limited Liability Company Agreement"** means the Operating Agreement for TDS USA, a copy of which has been made available to Buyer.

**"LLC Distribution"** has the meaning specified in Section 2.1.1.

**"Loss"** means any and all claims, damages, losses, liabilities, obligations, settlements, injunctions, suits, actions, proceedings, liens, demands, charges, fines, penalties, costs and expenses of every kind and nature (whether based on tort, breach of contract, product liability, patent or copyright infringement or otherwise), including, without limitation, reasonable fees and expenses of attorneys and other professionals.

**"Material Adverse Event"** means any fact, event or condition that has or would reasonably be expected to have a material adverse effect on the Business taken as a whole. The parties agree that none of the following events or occurrences, singly or in the aggregate, shall be deemed to constitute a Material Adverse Event to the extent that they occur on or after the date hereof and prior to the Closing Date: (i) the loss of any Employees, whether arising from or related to the transactions contemplated by this Agreement or otherwise, provided, that such loss does not result from Seller's or DEI's breach of Section 6.3, 7.4.1(ii) or 7.4.4; (ii) subject to Section 8.2.2, the closure of any Store or Stores or the financial or operational performance of any Store or Stores, provided, that such events or occurrences do not result from Seller's or DEI's breach of Section 6.3 or 6.7; (iii) events or conditions

affecting TWDC or any of its Affiliates other than the Company; (iv) any events generally affecting the economy or world events generally, including terrorist activities or potential or actual military conflicts; (v) events generally affecting the industry in which the Company does business; or (vi) events or conditions arising from the announcement of the transactions contemplated by this Agreement. No event or condition that results from any of the foregoing events occurring on or after the date hereof shall be deemed to constitute a breach of any of the representations or warranties of DEI or Seller hereunder.

**"Material Contract"** means (i) any Contract pertaining to the Business to which TDS USA or TDS Canada is a party that (A) after the Balance Sheet Date imposes or will impose an obligation on TDS USA or TDS Canada to pay, or under which TDS USA or TDS Canada will have the right to receive, an amount of $300,000 or more in the aggregate, (B) creates Indebtedness of TDS USA or TDS Canada other than in the ordinary course of business and other than any such Indebtedness consisting of intercompany Indebtedness that will not be an obligation of the Company as of the Closing, (C) either (I) is not terminable by TDS USA or TDS Canada on less than one hundred fifty (150) days' prior notice or (II) is terminable by TDS USA or TDS Canada on less than one hundred fifty (150) days' prior notice and imposes on TDS USA or TDS Canada an obligation to pay an amount of $300,000 or more in connection with such termination, or (D) limits, in any material respect, the Company's ability to conduct any business or to enter into transactions with third parties; or (ii) any Contract between any Person who is not an Affiliate of the Company, on the one hand, and TDS USA or TDS Canada, on the other hand, pursuant to which such Person (A) grants TDS USA or TDS Canada the right and license to manufacture or cause to be manufactured on its behalf consumer products bearing, featuring or incorporating the Intellectual Property of the licensor thereunder and (B) is entitled as the licensor to receive from TDS USA or TDS Canada royalties for the use of such licensor's Intellectual Property. Notwithstanding the foregoing, "Material Contracts" excludes Employment Contracts, Employee Benefit Plans, Leases, Contracts identified on TDS Schedule 1.1(d) as Retained Assets, the U.K. Lease Guarantees and the Intercompany Agreements and Arrangements.

**"Membership Unit Acquisition"** has the meaning specified in Section 2.2.

**"Membership Units"** has the meaning specified in the recitals hereto.

**"Merchant Services Agreement"** means that certain Amended and Restated Merchant Services Agreement between TCP and Hurley State Bank dated as of July 1, 2000, as amended.

**"Michigan Avenue Store"** means the Disney Retained Store located at 717 North Michigan Avenue in Chicago, Illinois.

**"Modified GAAP"** with reference to any financial statements of TDS USA and/or TDS Canada, means that such financial statements have been prepared in accordance with GAAP, except that they: (i) may not include all normal year-end audit adjustments (but shall include any such normal year-end audit adjustments (if any) that apply to inventory and/or trade payables); (ii) may not contain notes required by GAAP; (iii) may not include adjustments to reflect certain costs incurred by DEI or its Affiliates (other than TDS USA or TDS Canada) on behalf of TDS USA and/or TDS Canada that would have been included in intercompany payables had TDS USA and/or TDS Canada, as applicable, been operating on a stand-alone basis; (iv) do not include a provision for some or all income taxes because the tax effects accrue to DEI or its Affiliates (other than TDS USA or TDS Canada) as the owner of TDS USA and TDS Canada; and (v) do not and shall not include any provision for (a) any New Rent Requirements or New Capital Expenditure Requirements or (b) any other monetary obligations agreed to by Buyer in accordance with this Agreement in connection with any renewal, extension, amendment or modification of any Acquired Lease or any New Lease or in connection with obtaining any required Consent from a Landlord under an Acquired Lease (all of which shall be the sole responsibility of Buyer without compensation in any manner whatsoever from DEI or Seller). Unless otherwise expressly provided herein, liabilities and obligations that (a) are created by, or incurred pursuant to or in connection with, this Agreement, the documents or instruments contemplated hereby or the transactions contemplated hereby or thereby and (b) are not reflected on the Pro Forma Balance Sheet, shall not be included on any balance sheet prepared in connection with the working capital adjustment contemplated by Section 2.3, including, without limitation, the Closing Balance Sheet, the Subsequent Closing Balance Sheet, Buyer's Estimated Closing Balance Sheet, Buyer's Estimated Subsequent Closing Balance Sheet, the Final Closing Balance Sheet or the Final Subsequent Closing Balance Sheet. In addition, unless otherwise expressly provided herein (including, without limitation, in the provisos in the definitions of "Current Assets" and "Current Liabilities"), "Modified GAAP" means that, with respect to any items (such as reserves or accruals) that are determined by estimation, any estimates made by DEI or Seller in connection with the preparation of any balance sheet used for purposes of the working capital adjustment contemplated by Section 2.3, including, without limitation, the Closing Balance Sheet, that has a reasonable basis in Modified GAAP shall not be adjusted in any manner whatsoever in connection with the preparation of any other balance sheet used for purposes of the working capital adjustment contemplated by Section 2.3, including, without limitation, the Subsequent Closing Balance Sheet, Buyer's Estimated Closing Balance Sheet, Buyer's Estimated Subsequent Closing Balance Sheet, the Final Closing Balance Sheet or the Final Subsequent Closing Balance Sheet. For the avoidance of doubt, the preceding sentence shall not apply to the projected results of transactions that occur between the date on which the Closing Balance Sheet is prepared by the Company, DEI and Seller and the Closing Date, as such projections are made in good faith by the Company, DEI and Seller pursuant to Section 2.3.1, which projections may be adjusted to reflect the actual results of such transactions in connection with Buyer's preparation of the Buyer's Estimated Closing Balance Sheet pursuant to Section 2.3.2(a). For purposes of clarification, any Indebtedness owed by TDS USA or TDS Canada to DEI or any of its Affiliates (other than TDS USA or TDS Canada), or vice versa, of a type that has been, in accordance with past business practice, categorized as an "intercompany payable" or an "intercompany receivable" on the balance sheets for TDS USA and/or TDS Canada would not, in accordance with GAAP and Modified GAAP and the terms of this Agreement, be reflected on the balance sheets for TDS USA or TDS Canada as an "intercompany payable" or an "intercompany receivable," but instead, the net of such amounts would be and shall be reflected on such balance sheets as a credit (or, as applicable, a debit) to the stockholder's equity of TDS USA or TDS Canada (as applicable) as a result of the cancellation of any

such "intercompany payables" and "intercompany receivables" and the corresponding contributions of such net amounts to the capital of TDS USA or TDS Canada in accordance with this Agreement.

**"Monogram"** has the meaning specified in Section 6.9.1.

**"Monogram Agreement"** has the meaning specified in Section 6.9.1.

**"Monogram Participation Agreement"** means a "Participation Agreement," as defined in and contemplated by the Monogram Agreement, regarding participation in the credit card program established by Monogram pursuant to the Monogram Agreement.

**"Month-to-Month Acquired Leases"** means Acquired Leases under which TDS USA's or TDS Canada's tenancy is, as of the date hereof or as of any date prior to or including the Closing Date, month-to-month.

**"Multiemployer Plan"** means any "multiemployer plan" as defined in Section 4001(a)(3) of ERISA that is (or was) subject to Title IV of ERISA.

**"Mutual Fund"** shall mean any open-end investment fund commonly known as a "mutual fund" that combines the funds of numerous individual investors, invests such funds in a variety of securities, and enables each individual investor to participate on a pro rata basis in all such investments through such investor's interest in the mutual fund; provided, that, for purposes of this Agreement, any Mutual Fund that is sponsored, established, administered, controlled or operated by a Person who would be a Disqualified Person but for subparagraph (6) of the definition of "Disqualified Person" shall be excluded from the definition of "Mutual Fund."

**"NAP"** has the meaning specified in Section 6.9.1.

**"NAP Agreement"** has the meaning specified in Section 6.9.1.

**"New Capital Expenditure Requirements"** has the meaning specified in Section 6.7.1(b).

**"New Lease"** has the meaning specified in Section 6.7.1(b).

**"New Rent Acquired Stores"** has the meaning specified in Section 6.7.1(b).

**"New Rent Requirements"** has the meaning specified in Section 6.7.1(b).

**"New TDS Canada"** means Hoop Canada, Inc., a corporation incorporated under the laws of the Province of New Brunswick and that will be solely owned by Canadian Purchaser.

**"New TDS Canada Securities"** means the Securities of New TDS Canada in whatever form.

**"New TDS LLC"** means Hoop Retail Stores, LLC, a Delaware limited liability company that is solely owned by USA Purchaser and is the parent of Canadian Purchaser. Immediately following the Closing, USA Purchaser shall cause TDS USA to be merged with and into New TDS LLC in accordance with Section 2.6.1.

**"New TDS LLC Securities"** means the Securities of New TDS LLC in whatever form.

**"Non-Core Stores"** means the Stores designated as "Non-Core Stores" on the Acquired Stores Schedule or the Deferred Stores Schedule, as applicable.

**"Non-IT Intellectual Property"** means any and all Intellectual Property that is owned, licensed, used or controlled by TDS USA or TDS Canada other than any Intellectual Property that is embodied solely in the Company Information Technology.

**"Non-LC Purchase Order"** means any Pre-Closing Inventory Order with respect to which a letter of credit in support thereof was not issued prior to the Closing, for whatever reason.

**"Non-Signatory Dispute"** has the meaning specified in Section 11.17.15.

**"Non-Transferable Stores"** has the meaning specified in Section 6.7.2(a).

**"Obligations"** has the meaning specified in the Acquisition Agreement Guarantee.

**"Obligor"** has the meaning specified in Section 6.11.11.

**"Ocean Sky"** has the meaning specified in Section 6.9.1.

**"Ocean Sky Agreement"** has the meaning specified in Section 6.9.1.

**"OLC"** has the meaning specified in Section 6.9.1.

**"OPEIU Agreement"** has the meaning specified in Section 4.18.2.

**"Operating Expenses"** means, with respect to any Acquired Lease, amounts (if any) payable by the tenant pursuant to such Acquired Lease to the applicable Landlord, typically monthly, solely for the tenant's share of (i) real estate taxes and impositions, (ii) insurance costs, (iii) so-called "common area maintenance" costs, (iv) utilities and (v) merchants' association dues, in each case in accordance with the terms of the applicable Acquired Lease.

**"Operational Representations"** means those representations and warranties of (i) DEI and Seller contained in Article IV that are not Fundamental Representations of DEI and Seller and (ii) Buyer contained in Article V that are not Fundamental Representations of Buyer.

**"Ordered Inventory"** means inventory covered by or included in a Pre-Closing Inventory Order with respect to which, as of the Closing Date, a letter of credit has been issued pursuant to a Trade LC Facility, but has not yet been drawn. For purposes of clarification, the parties hereby agree that (i) if any such letter of credit issued pursuant to a Trade LC Facility has been drawn, such inventory shall be deemed to be included under the definition of "Inventory" and (ii) "Ordered Inventory" shall exclude any such inventory located in or on the premises of, or in transit to or acquired for, the Flagship Stores.

**"Outlet Store"** means a retail store that offers products to consumers with an emphasis on low prices, a material purpose of which is liquidating excess, obsolete or otherwise slow-moving inventory from other related retail activities (e.g., a "Gap" outlet would liquidate inventory from the "Gap" chain of specialty retail clothing stores).

**"Outstanding Canadian Purchaser Securities"** means the Canadian Purchaser Securities outstanding as of any particular date.

**"Outstanding New TDS Canada Securities"** means the New TDS Canada Securities outstanding as of any particular date.

**"Outstanding New TDS LLC Securities"** means the New TDS LLC Securities outstanding as of any particular date.

**"Outstanding TCP Securities"** means the TCP Securities outstanding as of any particular date.

**"Outstanding USA Purchaser Securities"** means the USA Purchaser Securities outstanding as of any particular date.

**"Parent Affiliate"** means, with respect to any Person, an Affiliate of such Person who owns a majority of the outstanding voting equity Securities of such Person.

**"Partial TDS Canada Section 116 Certificate"** has the meaning specified in Section 3.5.1.

**"Participation Agreements"** has the meaning specified in Section 6.10.1.

**"Party Designations"** has the meaning specified in Section 11.17.5(b).

**"PBGC"** means the Pension Benefit Guaranty Corporation.

**"Pension Fund"** means an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA that is either (i) subject to the requirements of Section 403(a) of ERISA or (ii) described in Sections 3(32), 3(33) or 4(b)(4) of ERISA; provided, that, for purposes of this Agreement, any Pension Fund (a) that is sponsored, established, administered, controlled, managed or operated by a Person who would be a Disqualified Person but for subparagraph (6) of the definition of "Disqualified Person" or (b) the majority of the funds of which is contributed by a Person and/or the employees of a Person who would be a Disqualified Person but for subparagraph (6) of the definition of "Disqualified Person," shall be excluded from the definition of "Pension Fund."

**"Permits"** means any approval, authorization, consent, qualification, registration, license, permit, franchise, certificate of authority or order, or any waiver of the foregoing, required to be obtained from or issued by, or any notice, statement or other communication required to be filed with or delivered to, any Governmental Entity, including in connection with any applicable franchise Laws.

**"Permitted Encumbrance"** means any Encumbrance that (i) is reflected or disclosed in the Financial Statements, including any notes thereto; (ii) constitutes a statutory lien or other lien not securing obligations for borrowed money arising in the ordinary course of business; (iii) is a lease for personal property and is reflected on TDS Schedule 4.5 or entered into in the ordinary course of business; or (iv) does not materially detract from the value of the Company's interest in the property in question or materially detract from or interfere with the use of such property in the ordinary conduct of the Business as currently conducted.

**"Person"** means any natural person or Entity.

**"Per Store Inventory Allocation"** means an amount of Inventory equal to (i) the aggregate book value of all Inventory divided by (ii) the sum of (A) the total number of Stores (including the Acquired Stores, the Disney Retained Stores and the Deferred Stores) in operation as of the Closing Date other than the Flagship Stores plus (B) four (4).

**"Per Store Ordered Inventory Allocation"** means an amount of Ordered Inventory equal to (i) the aggregate book value of all Ordered Inventory (assuming that such Ordered Inventory were reflected on the books of the Company as of the Closing Date) divided by (ii) the sum of (A) the total number of Stores (including the Acquired Stores, the Disney Retained Stores and the Deferred Stores) in operation as of the Closing Date other than the Flagship Stores, plus (B) four (4).

**"Post-Closing Adjustment Amount"** means the positive or negative amount equal to (i) the Final Working Capital Adjustment Amount minus (ii) any Estimated Closing Working Capital Adjustment Amount paid at the Closing (and, if applicable, the Working Capital Deferred Delivery Date) pursuant to Section 3.2 or 3.3, as applicable.

**"Post-Closing Inventory Orders"** means inventory purchase orders issued by the Company (as a Subsidiary of Buyer) following the Closing Date.

**"Post Street Store"** means the Disney Retained Store located at 400 Post Street in San Francisco, California.

**"Pre-Closing Inventory Orders"** has the meaning specified in Section 6.11.2.

**"Pre-Closing Transaction Contracts"** means all Contracts giving effect to, or entered into connection with, the transactions specified in Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4.

**"Pre-Closing Transactions"** has the meaning specified in Section 2.1.

**"Pre-Signing Company Drafts"** means the draft dated October 14, 2004 of the Company Credit Facility and the related Designation of Secured Lender Under License Agreement, which are attached hereto as Annex H, together with Section 16.5 of the License and Conduct of Business Agreement in the form attached to this Agreement.

**"Pre-Signing Wells Draft"** means the draft dated October 14, 2004 of the Wells Fargo Credit Facility attached hereto as Annex I.

**"Prime Rate"** means the base rate on corporate loans at large United States money center commercial banks as such rate is reported under "prime rate" in The Wall Street Journal from time to time.

**"Priority Designations"** has the meaning specified in Section 11.17.5(d).

**"Pro Forma Balance Sheet"** has the meaning specified in Section 4.2.1.

**"PWC"** means PricewaterhouseCoopers LLC.

**"Related Agreements"** means the License and Conduct of Business Agreement and the Deferred Lease Assignment and Assumption Agreement.

**"Remittance Date"** has the meaning specified in Section 3.5.3.

**"Representatives"** means, with respect to any Person, the officers, directors, employees, managers, partners, agents, consultants, advisors (including legal advisors, financial advisors and accountants), contractors and subcontractors of such Person.

**"Retail Facilities"** means retail shopping mall, outlet center or strip mall facilities primarily focused on retail sales of consumer products.

**"Retained Asset Agreements"** has the meaning specified in Section 6.9.1.

**"Retained Assets"** means all Contracts, properties, assets and rights owned, leased, licensed, controlled or held by TDS USA and/or TDS Canada that are not related solely to, or are not used solely in connection with the operation of, or are not intended solely for the benefit of, the Business, including those Contracts, properties, assets and rights set forth on TDS Schedule 1.1(d) hereto. For purposes of clarification, "Retained Assets" will not include the Contracts, properties, assets and rights specifically set forth on the Company Assets Schedule, which will be retained by the Company as of the Closing.

**"Retained Liabilities"** means all liabilities, obligations and commitments arising directly under or solely in connection with the Retained Assets.

**"Retention Payment"** has the meaning specified in Section 7.4.5.

**"Retention Program"** means the retention program established by the Company prior to the date of this Agreement with respect to certain of the Employees, but specifically excluding the Transition Retention Program.

**"Revolving Credit Agreement"** means the Revolving Credit Agreement dated as of May 10, 2004 between DEI and TDS USA.

**"RNC"** has the meaning specified in Section 6.9.1.

**"SEC"** means the Securities and Exchange Commission.

**"Second Largest TCP Affiliate Stockholder"** means, with respect to each Affiliate of TCP (other than Buyer and Buyer's Subsidiaries), the Person or group of Persons whose beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of voting TCP Affiliate Securities of such Affiliate of TCP entitles it to the second largest vote (after the Largest TCP Affiliate

Stockholder) in the election of the board of directors (or comparable governing body) of such Affiliate of TCP among all holders of TCP Affiliate Securities of such Affiliate of TCP.

**"Second Largest TCP Stockholder"** means the Person or group of Persons whose beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of voting TCP Securities entitles it to the second largest vote (after the Largest TCP Stockholder) in the election of TCP's board of directors (or comparable governing body) among all holders of TCP Securities.

**"Section 116 Certificate"** has the meaning specified in Section 3.5.1.

**"Securities"** means any and all debt and equity securities and other ownership interests in whatever form, including, without limitation, common stock or shares, preferred stock or shares or other capital stock, membership, partnership or participation interests or units, and notes, bonds, debentures or other similar debt instruments, including, without limitation, any securities, warrants, options or rights convertible into or exercisable for any of the foregoing.

**"Securities Act"** means the Securities Act of 1933, as amended.

**"Seller"** has the meaning specified in the preamble to this Agreement.

**"Seller Consent Officers"** means Steve Finney, James Kapenstein, Grace Liang, Aldo Manzini and Mark Rodriguez.

**"Seller Disqualifying Event"** means (i) a negligent act or omission or willful misconduct of a Person otherwise required to be indemnified under Section 10.2.4 (provided, that, for purposes of clarification, Seller's or DEI's conduct of, or failure to conduct, due diligence shall not, as applicable, constitute a negligent act or omission), (ii) any reorganization or change in ownership of DEI, Seller or any of their Affiliates, (iii) any change by DEI, Seller or any of their Affiliates in the accounting basis on which its assets are valued or the accounting basis, method, policy or practice on which its financial statements are prepared, or (iv) any change in GAAP after the Closing Date.

**"Share Acquisition"** has the meaning specified in Section 2.2.

**"Shares"** has the meaning specified in the recitals hereto.

**"Signing Date Acquired Stores"** means the Acquired Stores set forth on the Acquired Stores Schedule on the date of this Agreement (i.e., prior to any amendment of the Acquired Stores Schedule pursuant to Section 6.7.2 or 6.7.3).

**"SKUs"** means stock keeping units.

**"Softlines"** has the meaning specified in the License and Conduct of Business Agreement.

**"Specialty Retail Store"** has the meaning specified in the License and Conduct of Business Agreement.

**"Standard Chartered Facility"** means the Banking Facility Letter dated January 16, 2004 among Standard Chartered Bank, TDS USA (as successor to The Disney Store, Inc.), DWS, The Disney Store Limited, Disney Auctions L.L.C., ABC Cable Networks Group, Buena Vista Theatrical Merchandise L.L.C. and Disney Direct Marketing Services, Inc.

**"Store Adjustment Methodology"** means, in connection with the preparation of any balance sheet of the Company or any portion of its operations that reflects the addition or deletion of, or the operations solely of, any Non-Transferable Stores, Expired Lease Stores, Deferred Stores or Approved Deferred Stores, that such balance sheet shall take into account, in a manner consistent with the manner in which Stores were deleted from the Pro Forma Balance Sheet, only the properties, assets, liabilities and obligations directly related to such Stores, including, without limitation, the respective Leases for such Stores, the furniture, fixtures and equipment located in such Stores, the Per Store Inventory Allocation and the Per Store Ordered Inventory Allocation for such Stores, and the employees who work in such Stores. For purposes of clarification, any calculation of Current Assets for the Approved Deferred Stores shall include the Approved Deferred Store Inventory Amount and the Approved Deferred Store Ordered Inventory Amount, but shall exclude any other amount for inventory.

**"Store-Related Assets and Liabilities"** means all properties, assets, rights, liabilities and obligations relating to the conduct and operation of the Business pertaining to the Approved Deferred Stores, including, without limitation, the inclusion of the Approved Deferred Store Inventory Amount and the Approved Deferred Store Ordered Inventory Amount as a Current Asset.

**"Stores"** means the specialty retail stores operated by TDS USA or TDS Canada under the "Disney Store" name on the date of this Agreement. For purposes of clarification, the Stores include the Acquired Stores, the Disney Retained Stores and the Deferred Stores.

**"Strike Notices"** has the meaning specified in Section 11.17.5(c).

**"Subsequent Closing"** has the meaning specified in Section 6.7.3(d).

**"Subsequent Closing Balance Sheet"** has the meaning specified in Section 6.7.3(c).

**"Subsequent Closing Date"** means the date of the Subsequent Closing.

**"Subsequent Closing Period"** has the meaning specified in Section 6.7.3(b).

**"Subsequent Closing Working Capital Baseline"** means (i) the Average Per Store Working Capital Value, multiplied by (ii) the number of Approved Deferred Stores set forth on the Approved Deferred Stores Schedule as of the Subsequent Closing Date; provided, that, for purposes of the foregoing subparagraph (ii), if applicable, the Ala Moana Store and the Caesar's Palace Store shall each be treated as two (2) Stores (such that the Subsequent Closing Working Capital Baseline with respect to each such Store shall be equal to twice the Average Per Store Working Capital Value).

**"Subsidiaries"**, as to any Person, means an Entity of which equity Securities having ordinary voting power (other than Securities having such power only by reason of the happening of a contingency) to elect a majority of the directors, managers, trustees or other comparable controlling persons of such Entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. With respect to the Company, its "Subsidiaries" shall be deemed to exclude TDS Franchising, Disney Rewards, LLC, The Walt Disney Company (Asia Pacific) Limited and The Disney Store (Australia) Pty Ltd., all Securities of which are Retained Assets and will be distributed out of TDS USA to Seller prior to the Closing pursuant to the LLC Distribution.

**"SunTrust"** means SunTrust Bank.

**"SunTrust Agreement"** means the SunTrust Merchant Services Agreement, dated February 6, 2001, by and between The Disney Store, Inc. and SunTrust, as modified and supplemented by the Addendum to Merchant Bank Card Agreement by and between The Disney Store, Inc. and SunTrust.

**"Superior Proposal"** means a Competing Offer from a third party that the Board of Directors of TWDC determines in its good faith judgment (following consultation with TWDC's financial advisor) to have economic terms that are more favorable in the aggregate to the stockholders of TWDC than the Membership Unit Acquisition and the Share Acquisition (taking into account all factors that such Board of Directors may deem relevant, including, in the judgment of such Board of Directors, the amount and form of consideration to be received in the transaction, the timing of and likelihood of closing such Competing Offer, and the relative value of any non-cash consideration).

**"Supplemental Disclosure Items"** has the meaning specified in Section 6.2.2.

**"Supporting LCs"** means, collectively, one or more standby letters of credit (in form and substance approved by DEI and Seller in accordance with Section 6.11.6) issued pursuant to the Company Credit Facility for the benefit of DEI and/or its Affiliates, to support the payment of (i) amounts outstanding under letters of credit issued (but not drawn) under a Trade LC Facility in connection with, or as a payment mechanism for, Buyer Ordered Inventory and/or (ii) Disney Umbrella Freight Services Amounts.

**"Tax"** or **"Taxes"** means (i) any and all federal, state, provincial, local, municipal and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities of any kind, including taxes or other charges based upon or measured by gross receipts, income, profits, sales, capital, use and occupation, and value added, goods and services, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, personal property, excise, duty, customs and real estate taxes, and, in addition to the foregoing, with respect to TDS Canada, Canada Pension Plan and provincial pension plan contributions, employment and unemployment insurance contributions, worker's compensation and deductions at source, together, in each case, with all interest, penalties and additions imposed with respect to such amounts; (ii) any liability for the payment of any amounts of the type described in subparagraph (i) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iii) any liability for the payments of the amounts of the types described in subparagraph (i) or (ii) as a result of being a transferee of, or a successor in interest to, any Person or as a result of an express or implied obligation to indemnify any Person (other than an indemnification obligation arising under this Agreement).

**"Tax Proceeding"** has the meaning specified in Section 7.1.2.

**"Tax Purchase Price"** means the aggregate amount, calculated using United States Federal income tax principles, that must be allocated to the assets of TDS USA.

**"Tax Return"** means a report, return or other information or form required to be supplied to a Governmental Entity with respect to Taxes, including, where permitted or required, combined or consolidated returns for any group of entities that includes any Affiliate.

**"Tax Sharing Agreement"** means a Contract between or among DEI and/or any of its Affiliates other than TDS USA and TDS Canada, on the one hand, and TDS USA and/or TDS Canada, on the other hand, relating to the allocation of responsibility for tax liability between or among the parties thereto.

**"TCP"** means The Children's Place Retail Stores, Inc., a Delaware corporation and the Parent Affiliate of Buyer.

**"TCP Affiliate Securities"** means Securities of any Subsidiary of TCP other than Buyer, New TDS LLC, New TDS Canada and Buyer's other Subsidiaries (including, from and after the Closing, the Company and its Subsidiaries), in whatever form.

**"TCP Guaranty and Commitment"** means a Guaranty and Commitment by TCP and Buyer in favor of TDS USA, TDS Canada and TDS Franchising, in substantially the form attached hereto as Annex C.

**"TCP Intercompany Services Agreement"** means the Intercompany Services Agreement by and among TCP and/or its Affiliates, on the one hand, and the Company and/or its Subsidiaries, on the other hand, in substantially the form attached to the License and Conduct of Business Agreement.

**"TCP Securities"** means the Securities of TCP in whatever form.

**"TDS Audited Financial Statements"** has the meaning specified in Section 6.13.

**"TDS Canada"** has the meaning specified in the recitals to this Agreement (giving effect to the last sentence of Section 2.6.2).

**"TDS Canada Withheld Amount"** has the meaning specified in Section 3.5.1.

**"TDS Franchising"** means TDS Franchising, LLC, a California limited liability company.

**"TDS Japan"** has the meaning specified in Section 6.9.1.

**"TDS USA"** has the meaning specified in the recitals to this Agreement (giving effect to the last sentence of Section 2.6.1).

**"TDS USA Merger"** has the meaning specified in Section 2.6.1.

**"TDS Schedules"** means those certain disclosure schedules that have been separately delivered by DEI and/or Seller to Buyer concurrently with the execution of this Agreement.

**"TDSJ IT Services Agreement"** has the meaning specified in Section 6.9.1.

**"TDSJ License Agreement"** has the meaning specified in Section 6.9.1.

**"Termination Date"** has the meaning specified in Section 9.1.5.

**"Theme Park"** means either an individual facility or a group, district or other assemblage of facilities that is known, identified, promoted or held out to the public as a common or unified complex, in either case offering amusement-style attractions and/or rides (e.g., roller coasters, "Space Mountain," "It's a Small World," or the "Jaws" attraction at Universal Studios Theme Park) and/or other substantially similar forms of entertainment, regardless of whether a fee is charged to gain entry or admission thereto; provided, that, "Theme Park" shall not include (i) any local, county or state fairs, sporting arenas or sporting events or museums or (ii) any facilities that offer amusement-style attractions and/or rides but with respect to which the offering of such amusement-style attractions and/or rides does not comprise more than, in the case of Retail Facilities, fifteen percent (15%), and in the case of all other facilities, five percent (5%), of the total square footage of such facilities that is open to the general public (e.g. a gambling casino, such as the New York, New York hotel and casino in Las Vegas, that offers amusement-style rides or games in one portion of the lobby of the casino), provided, that the carveouts described in this subparagraph (ii) shall not apply to any facility that is adjacent to, contained within, or held out to the public as being a part of, a facility that is a "Theme Park" within the terms of this definition. By way of example, and for illustration purposes only, the following venues (and all components thereof) are Theme Parks for the purposes of this definition: MAGIC KINGDOM® Park, DISNEYLAND® Resort, WALT DISNEY WORLD® Resort, DISNEYLAND Resort PARIS, Cedar Point, Six Flags, LEGOland, Busch Gardens, Universal® Studios and Sea World®.

**"Theme Park Ticket Agreements"** means any intercompany agreement between DEI or its Affiliates (other than the Company), on the one hand, and the Company, on the other hand, pertaining to the purchase of Theme Park tickets by the Company for sale through the Stores, including, without limitation, the Domestic Retailer Ticket Agreement entered into as of January 1, 2003 by and between WDPR and TDS USA, as amended.

**"Third Party Claims"** has the meaning specified in Section 10.4.

**"Toronto-Dominion Facility"** means that certain Agreement dated as of May 23, 2002 between The Children's Place (Canada) LP and Toronto-Dominion Bank, as amended.

**"Trade LC Facility"** means any bank, credit or other comparable lending facility pursuant to which DEI or any of its Affiliates is the obligor and under which letters of credit have been issued in connection with, or as a payment mechanism for, inventory purchase orders issued by the Company, including, without limitation, the Standard Chartered Facility.

**"Transaction Taxes"** has the meaning specified in Section 7.1.3.

**"Transfer"** means any issuance, sale, transfer, assignment, subletting, hypothecation, pledge as security or collateral, Encumbrance or other disposition, in whole or in part, whether voluntarily or involuntarily, whether by gift, bequest or otherwise. In the case of a hypothecation, pledge or Encumbrance, the Transfer shall be deemed to occur both at the time of the initial pledge and at any pledgee's sale, any sale by any secured creditor, or any retention by any secured creditor of the pledge assets in complete or partial satisfaction of the indebtedness for which such assets are security.

**"Transitional Administrative Services Agreement"** has the meaning specified in Section 6.15.1.

**"Transitional Disney Retained Stores Agreement"** has the meaning specified in Section 6.15.1.

**"Transitional Distribution Services Agreement"** has the meaning specified in Section 6.15.1.

**"Transitional Information Technology Services Agreement"** has the meaning specified in Section 6.15.1.

**"Transition Employees"** has the meaning specified in Section 7.4.5.

**"Transition Letter Agreement"** has the meaning specified in Section 7.4.5.

**"Transition Retention Program"** has the meaning specified in Section 7.4.5.

**"Transition Services Termination Date"** has the meaning specified in Section 7.4.5.

**"Trial Balance"** means the pro forma trial balance of the Company as of June 26, 2004 giving effect as of such date to the Pre-Closing Transactions, as attached to the Financial Statements and included in TDS Schedule 4.2.1.

**"TWDC"** means The Walt Disney Company, a Delaware corporation.

**"U.K. Lease Guarantees"** means guarantees, lines of credit, letters of credit or comparable agreements or arrangements entered into by TDS USA under which, prior to the Closing, TDS USA guaranteed or otherwise ensured or secured some or all of the obligations of its Affiliates (other than TDS Canada), including, without limitation, the agreements and arrangements set forth on TDS Schedule 6.7.1.

**"USA Purchaser"** has the meaning specified in the preamble to this Agreement.

**"USA Purchaser Securities"** means the Securities of USA Purchaser in whatever form.

**"ValueLink Agreement"** means the Enterprise Stored Value Card Agreement, dated as of September 9, 2004, by and between Disney Gift Card Services, Inc., a Virginia corporation, and ValueLink, LLC, a Delaware limited liability company (d/b/a ValueLink).

**"ValueLink Participation Agreement"** means a participation agreement, as contemplated by the ValueLink Agreement, regarding participation in the gift card program established pursuant to the ValueLink Agreement by Persons who are not Affiliates of Disney Gift Card Services, Inc.

**"WDPR"** has the meaning specified in Section 6.9.1.

**"Wells Fargo"** means Wells Fargo Retail Finance LLC.

**"Wells Fargo Credit Facility"** means a loan and security agreement (or an amendment of an existing loan and security agreement) among TCP, Wells Fargo (as Agent) and the financial institutions named therein to be entered into after the date hereof and on or prior to the Closing Date pursuant to and in accordance with Section 6.11.7.

**"Working Capital Deferred Delivery Date"** means December 24, 2004 or, if the Closing occurs after December 24, 2004, the Closing Date.

1.2 Interpretation. Except as otherwise expressly provided in this Agreement, the following rules shall apply hereto: (i) the singular includes the plural and the plural includes the singular; (ii) "or" is not exclusive, and "include" and "including" are not limiting; (iii) a reference to any Contract includes any permitted modifications, supplements, amendments, restatements, renewals, extensions and replacements; (iv) a reference in this Agreement to a section or annex is to the section of or annex to this Agreement unless otherwise expressly provided; (v) a reference to a section or paragraph in this Agreement shall, unless the context clearly indicates to the contrary, refer to all sub-parts or sub-components of any said section or paragraph; (vi) words such as "hereunder," "hereto," "hereof" and "herein," and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular clause hereof; (vii) a reference in this Agreement to a "party" (whether in the singular or the plural) shall (unless otherwise indicated herein) include both natural persons and Entities; (viii) references herein to "Dollars" or "$" shall mean United States dollars unless otherwise specifically stated; and (ix) with respect to any matter requiring the approval or consent of either party hereunder, if no other standard for granting or denying such approval or consent is provided in this Agreement, such determination shall be made by the respective party in its sole discretion.

## ARTICLE II
## MEMBERSHIP UNIT AND SHARE ACQUISITION

2.1 Pre-Closing Transactions. DEI, Seller and Buyer hereby acknowledge and agree that, prior to the Closing, the following transactions (collectively, the **"Pre-Closing Transactions"**) shall be effected by DEI and Seller:

2.1.1 Distribution to Member. Subject to obtaining the requisite Consents with respect to the distribution to Seller of the Retained Assets, Seller shall cause TDS USA to distribute to Seller, TDS USA's sole member, the Retained Assets then held by TDS USA and, if applicable pursuant to Section 6.7.3, the Deferred Leases to which TDS USA is a party and all properties, assets,

rights, liabilities and obligations relating to the conduct and operation of the Business pertaining to the Deferred Stores by TDS USA prior to the Closing Date (the **"LLC Distribution"**);

2.1.2 Transfer by TDS Canada. Subject to obtaining the requisite Consents with respect to the Transfer to Canadian Transferee of the Retained Assets, DEI shall cause TDS Canada to Transfer to Canadian Transferee the Retained Assets then held by TDS Canada and, if applicable pursuant to Section 6.7.3, the Deferred Leases to which TDS Canada is a party and all properties, assets, rights, liabilities and obligations relating to the conduct and operation of the Business pertaining to the Deferred Stores by TDS Canada prior to the Closing Date (the **"Canadian Transfer"**);

2.1.3 Transfer of Intellectual Property and Technology. DEI and Seller shall cause TDS USA and TDS Canada to execute the Intellectual Property and Technology Assignment; and

2.1.4 Intercompany Agreements and Arrangements. DEI and Seller shall cause the Company and the other parties to the Intercompany Agreements and Arrangements to terminate the Intercompany Agreements and Arrangements. For purposes of clarification, (i) upon termination pursuant to this Section 2.1.4, all Tax Sharing Agreements will have no further effect for any taxable year (whether the current year, a future year or a past year), (ii) trade payables in the ordinary course of business (e.g., trade payables for BVHE Merchandise) owed by the Company to DEI or any of its Affiliates (other than the Company) of a type that have not been previously treated as "intercompany payables" shall not be terminated pursuant to this Section 2.1.4, (iii) the Revolving Credit Agreement (which is a Retained Asset) and the Pre-Closing Transaction Contracts shall not be terminated pursuant to this Section 2.1.4 and (iv) termination of the Theme Park Ticket Agreements pursuant to this Section 2.1.4 shall be on a going-forward basis only, the Theme Park Ticket Agreements shall remain in effect with respect to any tickets sold to or by the Company prior to the Closing or otherwise held in inventory by the Company as of the Closing, and any such tickets shall remain subject to the terms of the applicable Theme Park Ticket Agreement.

At least five (5) Business Days prior to effecting any of the Pre-Closing Transactions, DEI and Seller shall provide Buyer (or, in the case of any Pre-Closing Transactions effected prior to the date hereof, DEI and Seller shall provide Buyer as soon as reasonably practicable after the date hereof) with a copy of each document or instrument designed to give effect to the Transfers or terminations contemplated in Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 (but, for the avoidance of doubt, excluding any other Contracts entered into in connection therewith that will not, following the Closing, impose any material liabilities or obligations on the Company other than any such liabilities or obligations imposed pursuant to, or otherwise contemplated by, this Agreement, the License and Conduct of Business Agreement or any other Related Agreement or the TCP Guaranty and Commitment, such as, by way of example only and without limitation, forms of consents and additional intercompany agreements and licenses). Such documents and instruments shall be provided to Buyer for review purposes only, and not for approval; provided, that, DEI and Seller shall consider in good faith any comments of Buyer provided to DEI and Seller within three (3) Business Days after receipt thereof, but any final determination as to whether to accept or reject any such comments shall be made by DEI and Seller in their respective sole discretion. DEI and Seller shall ensure that none of such documents or instruments shall conflict with, violate or breach any provision of this Agreement or any Related Agreement. Notwithstanding anything to the contrary contained in this Section 2.1, none of USA Purchaser, Canadian Purchaser or their Affiliates, including the Company following the Closing, shall have any material liability or obligation in connection with the Pre-Closing Transactions or any documents or instruments relating thereto, other than (i) those imposed pursuant to, or otherwise contemplated by, this Agreement, the License and Conduct of Business Agreement, any other Related Agreement or the TCP Guaranty and Commitment, (ii) those for which DEI and/or Seller have provided indemnification pursuant to the terms of this Agreement, the License and Conduct of Business Agreement, any other Related Agreement or the TCP Guaranty and Commitment, (iii) those reflected as a Current Liability on the Final Closing Balance Sheet and/or the Final Subsequent Closing Balance Sheet, (iv) those consisting of obligations to provide customary assistance, including the execution of documents and powers of attorney granted for such purpose, in connection with the transfer of the assets subject to such documents or instruments and those consisting of other reasonably comparable obligations that are customary in transactions of the types contemplated by the Pre-Closing Transactions, and (v) those that are not covered, directly or indirectly, by any of the preceding subparagraphs (i) through (iv) but for which DEI and/or Seller agree to reimburse Buyer and its Affiliates for their reasonable, documented, out-of-pocket costs and expenses incurred in connection therewith (provided that no such reimbursement shall be required with respect to any liability or obligation that is covered, directly or indirectly, by any of the preceding subparagraphs (i) through (iv), inclusive).

2.2 Acquisition of the Membership Units and the Shares. Subject to the terms and conditions set forth herein, (i) Seller hereby agrees to transfer to USA Purchaser, and USA Purchaser hereby agrees to accept the transfer from Seller of, the Membership Units, free and clear of any Encumbrance, except as provided in the Limited Liability Company Agreement (the **"Membership Unit Acquisition"**), and (ii) DEI hereby agrees to transfer to Canadian Purchaser, and Canadian Purchaser hereby agrees to accept the transfer from DEI of, the Shares, free and clear of any Encumbrance (the **"Share Acquisition"**).

2.3 Working Capital Adjustments.

2.3.1 Closing Date Adjustment. At least two (2) Business Days prior to the Closing Date, DEI and Seller shall deliver to Buyer (i) the Closing Acquired Stores Schedule, the Closing Disney Retained Stores Schedule and the Deferred Stores Schedule; (ii) the estimated unaudited balance sheet of the Company on a combined basis as of the Closing Date, prepared by the Company, DEI and Seller in good faith, giving effect as of the Closing Date to the Pre-Closing Transactions (the **"Closing Balance Sheet"**); and (iii) a letter setting forth and certifying the Company's, DEI's and Seller's good faith calculation, based on the Closing Balance Sheet, of the Estimated Closing Working Capital and the Estimated Closing Working Capital Adjustment Amount. The Closing Balance Sheet shall be prepared in a manner and form consistent with the Pro Forma Balance Sheet (including the application of Modified GAAP), except for adjustments made to reflect the absence of the Non-Transferable Stores, Expired Lease Stores and the

Deferred Stores in accordance with the Store Adjustment Methodology, and the Estimated Closing Working Capital and the Estimated Closing Working Capital Adjustment Amount shall be calculated in a manner and form consistent with the June 2004 Working Capital Statement. Upon the Closing Date (and, if Buyer makes the election provided for in Section 3.3.1, on or prior to the Working Capital Deferred Delivery Date with respect to the Deferred Item Amount only), the Estimated Closing Working Capital Adjustment Amount shall be paid in accordance with Section 3.2 or 3.3, as applicable; provided, that if the Estimated Closing Working Capital Adjustment Amount is zero, there shall be no such payment made pursuant to this Section 2.3.1. If the Estimated Closing Working Capital Adjustment Amount is positive, (A) the **"Initial Canada Purchase Price"** shall be (x) the Estimated Closing Working Capital Adjustment Amount multiplied by (y) a fraction, the numerator of which is the number of Acquired Stores set forth on the Closing Acquired Stores Schedule that were operated by TDS Canada prior to the Closing, and the denominator of which is the total number of Acquired Stores set forth on the Closing Acquired Stores Schedule, and (B) the **"Initial USA Purchase Price"** shall be the Initial Purchase Price minus the Initial Canada Purchase Price. If the Estimated Closing Working Capital Adjustment Amount is negative or zero, the **"Initial Canada Purchase Price"** and the **"Initial USA Purchase Price"** shall each be zero.

2.3.2 Post-Closing Adjustment.

(a) Buyer's Estimated Closing Balance Sheet and Subsequent Closing Balance Sheet; Adjustment Statement. Within six (6) months after the Subsequent Closing Date or, if no Subsequent Closing occurs, within six (6) months after the expiration of the Subsequent Closing Period (if applicable), Buyer shall cause to be prepared and delivered to DEI and Seller (i) an unaudited balance sheet of the Company on a combined basis as of the Closing Date (**"Buyer's Estimated Closing Balance Sheet"**), (ii) Buyer's good faith estimate of the Final Closing Working Capital Adjustment Amount based on Buyer's Estimated Closing Balance Sheet (i.e., as if it were the Final Closing Balance Sheet), (iii) an unaudited balance sheet reflecting the assets and liabilities relating solely to the Approved Deferred Stores, including, without limitation, the Approved Deferred Leases and Store-Related Assets and Liabilities, as of the Subsequent Closing Date (**"Buyer's Estimated Subsequent Closing Balance Sheet"**), (iv) Buyer's good faith estimate of the Final Subsequent Closing Working Capital Adjustment Amount based on Buyer's Estimated Subsequent Closing Balance Sheet (i.e., as if it were the Final Subsequent Closing Balance Sheet), and (v) appropriate supporting documentation for each of the foregoing (collectively, the **"Adjustment Statement"**). Buyer's Estimated Closing Balance Sheet and Buyer's Estimated Subsequent Closing Balance Sheet shall be prepared in a manner and form consistent with the Closing Balance Sheet and Subsequent Closing Balance Sheet, respectively, including the application of Modified GAAP (and, for purposes of clarification, shall not include any adjustment to inventory arising from any inventory valuation or inventory count conducted by any party in connection therewith), and the Final Closing Working Capital Adjustment Amount and the Final Subsequent Closing Working Capital Adjustment Amount shall be calculated in a manner and form consistent with the Estimated Closing Working Capital Adjustment Amount.

(b) Adjustment Statement Objection. During the three (3) month period following Buyer's delivery of the Adjustment Statement, DEI, Seller and their Representatives shall have, upon request during normal business hours subject to reasonable prior notice, (x) the right to examine the Adjustment Statement and all records and documentation used to prepare the Adjustment Statement, (y) access to copies of all other books, records and accounts and such other information relating to the Adjustment Statement in the possession of Buyer, its Affiliates and/or their respective accountants and other Representatives as DEI or Seller reasonably requests, and (z) access to the employees, accountants and other Representatives of Buyer and its Affiliates as DEI or Seller reasonably requests, to allow DEI and Seller to examine the accuracy of the Adjustment Statement, including, without limitation, any item on Buyer's Estimated Closing Balance Sheet or Buyer's Estimated Subsequent Closing Balance Sheet and any item included in Buyer's good faith estimate of the Final Closing Working Capital Adjustment Amount or the Final Subsequent Closing Working Capital Adjustment Amount. In the event DEI or Seller disputes any matter described in the Adjustment Statement, including any item on Buyer's Estimated Closing Balance Sheet or Buyer's Estimated Subsequent Closing Balance Sheet, DEI or Seller shall so inform Buyer in writing (the **"Adjustment Statement Objection"**), setting forth a reasonably detailed description of the basis of the Adjustment Statement Objection on or before the last day of the three (3) month period referred to above in this Section 2.3.2(b). For purposes of clarification, DEI and Seller may examine the accuracy of any matter described in the Adjustment Statement and submit the Adjustment Statement Objection regardless of whether Buyer's estimated Final Closing Working Capital Adjustment Amount or estimated Final Subsequent Closing Working Capital Adjustment Amount set forth in the Adjustment Statement is positive, negative or zero. If DEI or Seller delivers an Adjustment Statement Objection, Buyer, DEI and Seller shall attempt in good faith to resolve such objection within two (2) months following Buyer's receipt thereof. If DEI, Seller and Buyer are unable to resolve the objection within such two (2) month period, they shall refer their remaining differences to Grant Thornton LLP (the **"CPA Firm"**), who shall, acting as experts in accounting and not as arbitrators or legal experts, resolve only those accounting disagreements specifically submitted to the CPA Firm. Buyer, DEI and Seller shall cooperate in good faith to agree upon the specific accounting disagreements to be submitted to the CPA Firm, the method for submitting such accounting disagreements, applicable guidelines to govern communications with the CPA Firm and other procedural rules with respect to the engagement of, the submission of accounting differences to, and the resolution of such accounting differences by, the CPA Firm. In no event shall Buyer, DEI or Seller submit to the CPA Firm, nor shall the CPA Firm resolve, any legal disagreements. Buyer, DEI and Seller shall make readily available to the CPA Firm all relevant books and records and any work papers relating to the Adjustment Statement, the employees, accountants and other Representatives of Buyer, DEI and Seller, and all other items reasonably requested by the CPA Firm. Buyer, DEI and Seller shall jointly engage the CPA Firm, and the fees and disbursements of the CPA Firm shall be shared equally by Buyer, on the one hand, and DEI and Seller, on the other hand. The CPA Firm shall be directed to deliver in writing its resolution of any disputed items from the Adjustment Statement to DEI, Seller and Buyer no later than the twentieth (20th) Business Day after the remaining differences underlying the Adjustment Statement Objection are referred to the CPA Firm. Upon completion of the foregoing procedures:

(i) the **"Final Closing Balance Sheet"** and the **"Final Subsequent Closing Balance Sheet"** shall be deemed to be (A) as set forth in the Adjustment Statement, if DEI and Seller do not object thereto within the specified time period, (B) as agreed upon by DEI, Seller and Buyer, if DEI or Seller objects to the Adjustment Statement but DEI, Seller and Buyer are able to resolve such objection, (C) as determined or resolved by the CPA Firm, if DEI or Seller objects to the Adjustment Statement and Buyer, DEI and Seller are unable to resolve all such objections, or (D) as applicable, a combination of the preceding subparagraphs (B) and (C); and

(ii) the **"Final Working Capital Adjustment Amount"** shall be either (A) the Combined Working Capital Adjustment Amount minus the Adjustment Threshold, if such Combined Working Capital Adjustment Amount is greater than the Estimated Closing Working Capital Adjustment Amount paid at the Closing pursuant to Section 3.2 or 3.3, as applicable (and the Deferred Item Amount paid on or prior to the Working Capital Deferred Delivery Date, if applicable), by an amount in excess of the Adjustment Threshold, (B) the Combined Working Capital Adjustment Amount plus the Adjustment Threshold, if such Combined Working Capital Adjustment Amount is less than the Estimated Closing Working Capital Adjustment Amount paid at the Closing pursuant to Section 3.2 or 3.3, as applicable (and the Deferred Item Amount paid on or prior to the Working Capital Deferred Delivery Date, if applicable), by an amount in excess of the Adjustment Threshold, or (C) the Estimated Closing Working Capital Adjustment Amount, if the Combined Working Capital Adjustment Amount is not greater than or less than the Estimated Closing Working Capital Adjustment Amount paid at the Closing pursuant to Section 3.2 or 3.3, as applicable (and the Deferred Item Amount paid on or prior to the Working Capital Deferred Delivery Date, if applicable), by an amount in excess of the Adjustment Threshold.

(c) Final Payments. Within three (3) Business Days following completion of the foregoing procedures, (i) if the Final Working Capital Adjustment Amount is equal to the amount calculated under subparagraph (A) of Section 2.3.2(b)(ii), USA Purchaser shall pay to Seller the Post-Closing Adjustment Amount (less any amount withheld pursuant to Section 3.5.1, which amount shall be delivered to the Escrow Agent pursuant to Section 3.5.1) by wire transfer of immediately available funds pursuant to wire instructions delivered by Seller to USA Purchaser (and (x) Canadian Purchaser shall be responsible for reimbursing USA Purchaser for its allocable portion thereof and (y) Seller shall be responsible for paying DEI and Canadian Transferee their respective allocable portions thereof), (ii) if the Final Working Capital Adjustment Amount is equal to the amount calculated under subparagraph (B) of Section 2.3.2(b)(ii), Seller shall pay to USA Purchaser the Post-Closing Adjustment Amount by wire transfer of immediately available funds pursuant to wire instructions delivered by USA Purchaser to Seller (and (x) DEI and Canadian Transferee shall be responsible for reimbursing Seller for their respective allocable portions thereof and (y) USA Purchaser shall be responsible for paying Canadian Purchaser its allocable portion thereof), or (iii) if the Final Working Capital Adjustment Amount is equal to the Estimated Closing Working Capital Adjustment Amount paid at the Closing (and the Deferred Item Amount paid on or prior to the Working Capital Deferred Delivery Date, if applicable), there shall be no further payment pursuant to this Section 2.3.2(c).

(d) Final Canada Purchase Price and Final USA Purchase Price. If the sum of the Estimated Closing Working Capital Adjustment Amount plus the Post-Closing Adjustment Amount is positive, (i) the **"Final Canada Purchase Price"** shall be (A) the Final Working Capital Adjustment Amount multiplied by (B) a fraction, the numerator of which is the number of Acquired Stores set forth on the Closing Acquired Stores Schedule plus the number of Approved Deferred Stores set forth on the Approved Deferred Stores Schedule, in each case which Acquired Stores and Approved Deferred Stores were operated by TDS Canada prior to the Closing, and the denominator of which is the total number of Acquired Stores set forth on the Closing Acquired Stores Schedule plus the total number of Approved Deferred Stores set forth on the Approved Deferred Stores Schedule, and (ii) the **"Final USA Purchase Price"** shall be the Final Working Capital Adjustment Amount minus the Final Canada Purchase Price. If the sum of the Estimated Closing Working Capital Adjustment Amount plus the Post-Closing Adjustment Amount is negative or zero, the **"Final Canada Purchase Price"** and the **"Final USA Purchase Price"** shall each be zero.

2.4 Allocation of the Tax Purchase Price to Assets. For United States Tax purposes, the Tax Purchase Price, if any, shall be allocated among the assets of TDS USA in accordance with Section 1060 of the Code as agreed upon by Buyer, DEI and Seller. A draft allocation schedule (the **"Initial Allocation Schedule"**), setting forth the Tax Purchase Price and the allocation of such Tax Purchase Price among the assets of TDS USA shall be provided by Buyer to DEI and Seller within two (2) months after the Closing Date. The Initial Allocation Schedule shall be finalized only after review and mutual approval in writing thereof by Buyer, DEI and Seller. The approved Initial Allocation Schedule shall be used by Buyer, DEI and Seller for federal, state, local and other tax purposes. If Buyer, DEI and Seller are unable to agree on the amount of the Tax Purchase Price and/or to finalize the allocation of the Tax Purchase Price among the assets of TDS USA within two (2) months after the Initial Allocation Schedule is provided by Buyer to DEI and Seller, then Buyer, DEI and Seller shall promptly appoint the CPA Firm to resolve any disagreements regarding the amount of the Tax Purchase Price and/or any outstanding allocation issues in accordance with Section 1060 of the Code. The decision of the CPA Firm with respect to such outstanding issues shall be final and binding on Buyer, DEI, Seller and the Company. The fees and disbursements of the CPA Firm shall be shared equally by Buyer, on the one hand, and DEI and Seller, on the other hand. Buyer shall also provide an updated allocation schedule (the **"Final Allocation Schedule"**) to DEI and Seller within two (2) months after the Final Closing Balance Sheet is determined to account for any changes in the Tax Purchase Price or the assets acquired by Buyer after the date on which the Initial Allocation Schedule is delivered. The Final Allocation Schedule shall be subject to the same review and resolution procedures as are applicable to the Initial Allocation Schedule, limited, however, to the effects of any adjustments to the Tax Purchase Price or the assets set forth or required to be set forth on the Final Allocation Schedule. Each party will comply, and Buyer will cause the Company to comply, with the filing requirements of Section 1060 of the Code and other applicable regulations and will provide to the other party a pre-filing copy of such filings. DEI and Seller shall provide Buyer with such information as may be reasonably requested by Buyer that is necessary for purposes of calculating the Tax Purchase Price and that is in the possession of DEI and Seller or that is otherwise readily available to DEI and Seller without any additional diligence or expenditure of money by DEI, Seller or any of their Affiliates.

2.5 338 Election. Buyer hereby acknowledges and agrees that it shall not make any election under Section 338 of the Code (or any corresponding elections under state or local Tax Laws) in connection with the Share Acquisition.

2.6 Post-Closing Transactions.

2.6.1 The parties acknowledge that TDS USA shall be merged into New TDS LLC, with New TDS LLC being the surviving company in the merger (the **"TDS USA Merger"**), on or within twenty (20) Business Days following the Closing Date. At least ten (10) Business Days prior to the filing thereof with any Governmental Entity, Buyer shall provide DEI with complete and accurate copies of all documents and instruments to be used and/or filed in connection with the TDS USA Merger. Buyer shall in good faith consider all comments made by DEI with respect to such documents and instruments and shall incorporate all comments that DEI reasonably requests. Buyer shall ensure that none of the documents or instruments to be used and/or filed in connection with the TDS USA Merger shall conflict with, violate or breach any provision of this Agreement, the License and Conduct of Business Agreement or any other Related Agreement. Notwithstanding anything to the contrary contained in this Section 2.6, neither DEI, Seller nor their Affiliates shall have any responsibility for, or any liability in connection with, the TDS USA Merger or any documents or instruments related thereto. Following the TDS USA Merger, references in this Agreement (or in any Contract executed pursuant hereto or in connection with the transactions contemplated hereby) to "TDS USA" (including, without limitation, references to the "Company" that include TDS USA) shall be deemed to be references to "New TDS LLC," as the survivor of the TDS USA Merger.

2.6.2 The parties acknowledge that Buyer shall be required to cause TDS Canada to be continued under the laws of the province of New Brunswick, Canada and amalgamated with New TDS Canada, with New TDS Canada being the survivor in the amalgamation (the **"Canada Reincorporation"**) on or within twenty (20) Business Days following the Closing Date (except that such date may be extended if and only to the extent that any action taken, or failed to be taken, in error by DEI or its Affiliates on or prior to the Closing renders it impossible to effect such continuation and amalgamation within such twenty (20) Business-Day period, in which event, if applicable, Buyer and the Company shall be obligated to correct any such error and effect such continuation and amalgamation as soon as reasonably practicable thereafter, provided, that DEI shall reimburse Buyer and/or its Affiliates, as applicable, for reasonable, out-of-pocket documented costs incurred by them in connection with the correction of any such error(s)). The date on which the Canada Reincorporation is effected is referred to herein as the **"Canada Reincorporation Date."** At least ten (10) Business Days prior to the filing thereof with any Governmental Entity, Buyer shall provide DEI with complete and accurate copies of all documents and instruments to be used and/or filed in connection with the Canada Reincorporation. Buyer shall in good faith consider all comments made by DEI with respect to such documents and instruments and shall incorporate all comments that DEI reasonably requests. Buyer shall ensure that none of the documents or instruments to be used and/or filed in connection with the Canada Reincorporation shall conflict with, violate or breach any provision of this Agreement, the License and Conduct of Business Agreement or any other Related Agreement. Notwithstanding anything to the contrary contained in this Section 2.6, neither DEI, Seller nor their Affiliates shall have any responsibility for, or any liability in connection with, the Canada Reincorporation or any documents or instruments related thereto. Following the Canada Reincorporation, references in this Agreement (or in any Contract executed pursuant hereto or in connection with the transactions contemplated hereby) to "TDS Canada" (including, without limitation, references to the "Company" that include TDS Canada) shall be deemed to be references to the New Brunswick corporation that is the successor by continuance and amalgamation to TDS Canada.

## ARTICLE III
## CLOSING

3.1 Closing; No Change in Terms.

3.1.1 Closing.

(a) Unless this Agreement is earlier terminated under Article IX, the closing of the Membership Unit Acquisition and the Share Acquisition (the **"Closing"**) will take place on the date that is five (5) Business Days following satisfaction or waiver of the conditions set forth in Article VIII, at the offices of Irell & Manella LLP, 1800 Avenue of the Stars, Suite 900, Los Angeles, California, unless another place or time is agreed to by DEI, Seller and Buyer.

(b) Notwithstanding the foregoing, if, as of the date that the Closing would otherwise have occurred pursuant to Section 3.1.1(a), the Buyer Working Capital Amount (without taking into account the proviso contained in the definition of "Buyer Working Capital Amount," and based on the Estimated Closing Working Capital Adjustment Amount reported to Buyer by DEI and Seller pursuant to Section 2.3) exceeds Fifty Million Dollars ($50,000,000), and such excess amount (the **"Excess Amount"**) is not available for borrowing under the Wells Fargo Credit Facility as of such date, then Buyer, in its sole discretion, shall be entitled to postpone the Closing to a date that is up to, but not later than, the earlier of (i) the fifteenth (15th) Business Day following the date on which the Closing would otherwise have occurred pursuant to Section 3.3.1(a) and (ii) February 15, 2005. In such event, Buyer: (i) shall provide DEI and Seller with written notice of its election to postpone the Closing pursuant to this Section 3.1.1(b) on the earlier of (A) the date on which Buyer determines that the Excess Amount is not available for borrowing under the Wells Fargo Credit Facility as of the date on which the Closing otherwise would have occurred pursuant to Section 3.1.1(a) and (B) the date that is one (1) Business Day after DEI and Seller deliver to Buyer the Estimated Closing Working Capital Adjustment Amount pursuant to Section 2.3; and (ii) shall provide DEI and Seller with at least five (5) Business Days' prior written notice of the date, as postponed pursuant to this Section 3.1.1(b), on which the Closing shall occur. For purposes of clarification, Buyer shall only be entitled to one (1) postponement of the Closing Date pursuant to this Section 3.1.1(b), and such postponement shall not in any manner relieve Buyer of its obligations to close the Membership Unit Acquisition and the Share Acquisition in accordance with this Agreement on the date to which the Closing is postponed pursuant to this Section 3.1.1(b).

3.1.2 No Change in Terms. The parties agree and acknowledge that none of the material terms or conditions of the transactions contemplated by this Agreement, including, without limitation, those contemplated by the Related Agreements and the TCP Guaranty and Commitment and any financial terms or conditions contained therein, shall be modified based on, or as a result of, the date on which the Closing occurs. Without limiting the generality of the foregoing and by way of example only, Buyer shall not be compensated for the fact that it may not be able to operate the Business during all or any portion of the 2004 holiday season.

3.2 Closing Deliveries by DEI and Seller. At the Closing, DEI and/or Seller, as applicable, shall deliver or cause to be delivered to USA Purchaser and/or Canadian Purchaser, as applicable:

3.2.1 The certificate representing the Membership Units duly endorsed by Seller or accompanied by an Assignment Separate from Certificate in substantially the form attached hereto as Annex D-1 Transferring the Membership Units;

3.2.2 The certificate representing the Shares duly endorsed by DEI or accompanied by an Assignment Separate from Certificate in substantially the form attached hereto as Annex D-2 Transferring the Shares;

3.2.3 A properly executed statement in a form reasonably acceptable to Buyer satisfying the requirements of Treasury Regulation Section 1.1445-2(b)(2);

3.2.4 If the Estimated Closing Working Capital Adjustment Amount is negative, the Estimated Closing Working Capital Adjustment Amount, via wire transfer of immediately available funds to such account of USA Purchaser as shall have been designated in writing by USA Purchaser to Seller prior to the Closing (and (i) DEI shall be responsible for reimbursing Seller for its allocable portion thereof and (ii) USA Purchaser shall be responsible for paying Canadian Purchaser its allocable portion thereof);

3.2.5 The agreements, opinions, certificates and instruments referred to in Section 8.2 hereof;

3.2.6 Company Minute Books (including charters, bylaws and other comparable organizational documents); and

3.2.7 The stock (or share) ledgers and other equity ownership records of TDS USA and TDS Canada.

3.3 Closing Deliveries by Buyer. At the Closing (or, as set forth below with respect to the Deferred Item Amount, on or prior to the Working Capital Deferred Delivery Date):

3.3.1 If the Estimated Closing Working Capital Adjustment Amount is positive, USA Purchaser shall pay the Estimated Closing Working Capital Adjustment Amount (less any amount withheld pursuant to Section 3.5.1, which amount shall be delivered to the Escrow Agent pursuant to Section 3.5.1), via wire transfer of immediately available funds to such account of Seller as shall have been designated in writing by Seller to USA Purchaser prior to the Closing (and (i) Canadian Purchaser shall be responsible for reimbursing USA Purchaser for its allocable portion thereof and (ii) Seller shall be responsible for paying DEI its allocable portion thereof); provided, that, (A) if and only if the Closing Date occurs on or prior to November 30, 2004, a portion of the Buyer Working Capital Amount that is equal to the Deferred Item Amount and that is otherwise required to be delivered to Seller at the Closing may, at USA Purchaser's election, instead be delivered to Seller on or prior to the Working Capital Deferred Delivery Date via wire transfer of immediately available funds to such account of Seller as shall have been designated in writing by Seller to USA Purchaser prior to the Working Capital Deferred Delivery Date, provided, that, in such event, USA Purchaser shall pay Seller interest on the Deferred Item Amount from the Closing Date until the date of payment thereof at the per annum rate set forth in Section 11.13 (and Canadian Purchaser shall be responsible for reimbursing USA Purchaser for its allocable portion thereof); for purposes of clarification, Buyer acknowledges and agrees that this subparagraph (A) of this Section 3.3.1 shall be inapplicable and no payment of any portion of the Buyer Working Capital Amount may be deferred pursuant to this subparagraph (A) of this Section 3.3.1 if the Closing Date occurs after November 30, 2004; and (B) up to an aggregate of Forty Million Dollars ($40,000,000) of the Estimated Closing Working Capital Adjustment Amount in excess of the Buyer Initial Working Capital Portion required to be delivered to Seller at the Closing pursuant to this Section 3.3.1 may, at the election of USA Purchaser, be delivered on the Closing Date to Seller by the Company (rather than USA Purchaser), as a Subsidiary of Buyer, via wire transfer of immediately available funds to such account of Seller as shall have been designated in writing by Seller to USA Purchaser prior to the Closing, from proceeds of borrowings under the Company Credit Facility, if such facility is established and borrowings are available thereunder on the Closing Date; and

3.3.2 USA Purchaser and/or Canadian Purchaser, as applicable, shall deliver or cause to be delivered to DEI and/or Seller, as applicable, the agreements, opinions, certificates and instruments referred to in Section 8.3 hereof.

3.4 Resignation of Officers and Directors. Effective as of the Closing Date, DEI and/or Seller shall cause the officers, directors and/or managers of the Company who are not Continuing Employees to resign and, if applicable, Buyer shall cause new officers, directors and/or managers of the Company to be appointed, all in accordance with applicable Law and the governing documents of the Company.

3.5 Section 116 Requirements.

3.5.1 If available on or before the Closing Date, a certificate issued by the Canada Customs and Revenue Agency (**"CCRA"**) pursuant to section 116 of the Income Tax Act (Canada) in connection with the disposition of the Shares to Canadian Purchaser (a **"Section 116 Certificate"**) shall be provided by DEI to Buyer on the Closing Date. Any required withholding from the Initial Purchase Price shall be determined as follows:

(a) If the Section 116 Certificate has a certificate limit equal to or greater than the Initial Canada Purchase Price (an **"Acceptable TDS Canada Section 116 Certificate"**), no amount may be withheld from the Initial Purchase Price;

(b) If the Section 116 Certificate has a certificate limit that is less than the Initial Canada Purchase Price (a **"Partial TDS Canada Section 116 Certificate"**), Buyer shall withhold from the Initial Purchase Price an amount equal to twenty-five percent (25%) of the difference between the Initial Canada Purchase Price and the certificate limit (a **"TDS Canada Withheld Amount"**); or

(c) If neither an Acceptable TDS Canada Section 116 Certificate nor a Partial TDS Canada Section 116 Certificate is delivered to Buyer on the Closing Date, Buyer shall withhold from the Initial Purchase Price an amount equal to twenty-five percent (25%) of the Initial Canada Purchase Price (also a **"TDS Canada Withheld Amount"**).

Any amounts withheld pursuant to Sections 3.5.1(b) or 3.5.1(c) shall forthwith be converted at the then-prevailing exchange rate to Canadian dollars and paid by Buyer to the Escrow Agent to be held by the Escrow Agent pursuant to the terms of this Agreement and an escrow agreement on terms consistent herewith that are mutually agreed upon by DEI, Seller, Buyer and the Escrow Agent.

3.5.2 If Buyer withholds a TDS Canada Withheld Amount pursuant to Section 3.5.1, the Escrow Agent shall invest, on behalf of DEI, the TDS Canada Withheld Amount in one or more investments the interest on which is not subject to Canadian withholding tax under Part XIII of the Income Tax Act (Canada) from the Closing Date until the earlier of the date on which the TDS Canada Withheld Amount (or a portion thereof) is delivered to DEI or remitted to CCRA.

3.5.3 If, on or before the twenty-eighth (28th) day following the end of the month in which the Closing Date occurs (the **"Remittance Date"**):

(a) DEI provides Buyer and the Escrow Agent with a copy of a letter from CCRA confirming receipt of a section 116 application and advising that CCRA will not enforce the remittance of funds as required by subsection 116(5) of the Income Tax Act (Canada) (**"CCRA Letter"**) in relation to the disposition of the Shares, the escrow shall continue;

(b) DEI provides Buyer and the Escrow Agent with an Acceptable TDS Canada Section 116 Certificate, the Escrow Agent shall release the TDS Canada Withheld Amount to DEI with all interest accrued thereon to the date of such delivery; or

(c) DEI provides Buyer and the Escrow Agent with a Partial TDS Canada Section 116 Certificate, the Escrow Agent shall remit to CCRA a portion of the TDS Canada Withheld Amount equal to twenty-five percent (25%) of the excess of the Initial Canada Purchase Price over the certificate limit in the Partial TDS Canada Section 116 Certificate and shall release the remaining portion of the TDS Canada Withheld Amount to DEI with all accrued interest on the TDS Canada Withheld Amount to the date of such delivery.

In the absence of a CCRA Letter or a Section 116 Certificate being delivered as described in Sections 3.5.3(a), 3.5.3(b) or 3.5.3(c), the Escrow Agent shall remit the TDS Canada Withheld Amount to CCRA and pay all accrued interest to the date of the remittance on the TDS Canada Withheld Amount to DEI.

3.5.4 In the event the escrow continues past the Remittance Date in accordance with Section 3.5.3(a), the TDS Canada Withheld Amount shall be released or remitted as follows:

(a) If DEI provides Buyer and the Escrow Agent with an Acceptable TDS Canada Section 116 Certificate, the Escrow Agent shall release the TDS Canada Withheld Amount to DEI with all interest accrued thereon to the date of such delivery;

(b) If DEI provides Buyer and the Escrow Agent with a Partial TDS Canada Section 116 Certificate, the Escrow Agent shall remit to CCRA a portion of the TDS Canada Withheld Amount equal to twenty-five percent (25%) of the excess of the Initial Canada Purchase Price over the certificate limit in the Partial TDS Canada Section 116 Certificate and shall release the remaining portion of the TDS Canada Withheld Amount to DEI with all accrued interest on the TDS Canada Withheld Amount to the date of such delivery; or

(c) If, prior to receiving a Section 116 Certificate described in Section 3.5.4(a) or 3.5.4(b), CCRA notifies the Escrow Agent or a party that it is rescinding or revoking the CCRA Letter, the Escrow Agent shall remit the TDS Canada Withheld Amount to CCRA and pay all accrued interest on the TDS Canada Withheld Amount to the date of the remittance to DEI.

3.5.5 Where any amount is remitted to CCRA pursuant to this Section 3.5, the Escrow Agent shall furnish DEI with confirmation from CCRA that such remittance has been made and any such remittance shall be deemed to have been paid by Buyer to DEI on account of the Initial Canada Purchase Price.

3.5.6 The provisions of Sections 3.5.1 to 3.5.5 shall apply *mutatis mutandis* to the Final Canada Purchase Price, and references to the "Closing Date" for this purpose shall be deemed to be references to the date on which any final payment is made pursuant to Section 2.3.2(c) and references to the "Initial Canada Purchase Price" for this purpose shall be deemed to be references to the "Final Canada Purchase Price." For purposes of clarification, the parties acknowledge that it is DEI's and Seller's intent to apply initially for only one Section 116 Certificate with respect to all of the transactions contemplated by this Agreement (including the Subsequent Closing and any adjustment resulting in the Final Canada Purchase Price), unless, as determined by DEI or Seller in

its respective sole discretion, one or more additional Section 116 Certificates may be required, in which case DEI or Seller shall be entitled to apply for such additional certificates in its respective sole discretion.

## ARTICLE IV
## REPRESENTATIONS AND WARRANTIES OF DEI AND SELLER

Except as disclosed on the TDS Schedules, which have been separately delivered by DEI and Seller to Buyer concurrently with the execution of this Agreement, each of DEI and Seller, jointly and severally, represents and warrants to Buyer as follows:

4.1 Organization; Capitalization.

4.1.1 Incorporation and Authority of DEI. DEI is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. DEI has the requisite power and authority to execute and deliver this Agreement and the documents and instruments contemplated hereby and to perform and comply with all of the terms, conditions and covenants to be performed and complied with by it hereunder and thereunder.

4.1.2 Incorporation and Authority of Seller. Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of California. Seller has the requisite power and authority to execute and deliver this Agreement and the documents and instruments contemplated hereby and to perform and comply with all of the terms, conditions and covenants to be performed and complied with by it hereunder and thereunder.

4.1.3 Incorporation and Authority of the Company; Governing Documents.

(a) TDS USA is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California. TDS Canada is a corporation duly organized and validly existing under the laws of the Province of Ontario. Each of TDS USA and TDS Canada has the requisite power and authority to own its properties and assets and carry on the Business as currently conducted.

(b) DEI and Seller have heretofore delivered to Buyer true and complete copies of (i) the charter documents (articles or certificate of incorporation or other), bylaws, limited liability company agreements, operating agreements and securityholders agreements of the Company as in effect on the date hereof and (ii) other governing documents or Contracts pertaining to the management or operation of the Company or the ownership of any Securities thereof (collectively, **"Company's Governing Documents"**). There have been no amendments, restatements or modifications to Company's Governing Documents not delivered to Buyer.

4.1.4 Capitalization of TDS USA. One Hundred (100) units of membership interest of TDS USA are issued and outstanding, all of which are legally and beneficially owned solely by Seller free and clear of all Encumbrances, except as provided in the Limited Liability Company Agreement. There are no outstanding options, warrants, rights or other Securities of TDS USA convertible into, or exercisable for, Securities of TDS USA. At the Closing, Seller will Transfer the Membership Units representing all outstanding membership interests in TDS USA to Buyer free and clear of all Encumbrances, except as provided in the Limited Liability Company Agreement.

4.1.5 Capitalization of TDS Canada. The authorized share capital of TDS Canada consists of an unlimited number of common shares (without par value), of which Five Million Three Hundred Thousand Eight (5,300,008) common shares are outstanding. The Shares have been duly authorized and validly issued, are fully paid and non-assessable, and are legally and beneficially owned solely by DEI free and clear of all Encumbrances. There are no outstanding options, warrants, rights or other Securities of TDS Canada convertible into, or exercisable for, Securities of TDS Canada. At the Closing, DEI will Transfer the Shares to Buyer free and clear of all Encumbrances.

4.1.6 Tax Classification of TDS USA. For United States income tax purposes, on and immediately prior to the Closing Date TDS USA will be classified as an entity that is disregarded as an entity separate from its owner.

4.1.7 Subsidiaries. Except as set forth on TDS Schedule 4.1.7, the Company has no Subsidiaries nor any equity interests in any other Person.

4.2 Financial Statements; Indebtedness; Liabilities or Contingencies.

4.2.1 Financial Statements. TDS Schedule 4.2.1 contains (a) the unaudited combined balance sheet and statement of operations of the Company as of and for the twelve (12) months ended September 27, 2003 and as of and for the nine (9) months ended June 26, 2004 (collectively, the **"Combined Actual Financial Statements"**), (b) the pro forma unaudited combined balance sheet of the Company as of June 26, 2004, giving effect as of such date to the Pre-Closing Transactions (the **"Pro Forma Balance Sheet"** and, together with the Combined Actual Financial Statements, the **"Financial Statements"**) and (c) the June 2004 Working Capital Statement. For the avoidance of doubt, the Financial Statements shall not be deemed to include the Trial Balance or the June 2004 Working Capital Statement, even though the Trial Balance and the June 2004 Working Capital Statement may be included in TDS Schedule 4.2.1, and no representation or warranty whatsoever with respect to the Trial Balance or the June 2004 Working Capital Statement is made or deemed to be made hereby. The Financial Statements have been prepared in all material respects in conformity with Modified GAAP. The Financial Statements fairly present the financial condition and results of operations of the Company as of and for the periods ending on the respective dates thereof (subject, in the case of pro forma presentations, to the transactions assumed therein).

4.2.2 Indebtedness; Liabilities or Contingencies.

(a) TDS Schedule 4.2.2 identifies the amount and creditor of each item of Indebtedness of TDS USA or TDS Canada reflected on the Pro Forma Balance Sheet to the extent such item of Indebtedness exceeds $100,000 in principal amount of Indebtedness, but excluding the U.K. Lease Guarantees.

(b) As of the Closing Date, TDS USA and TDS Canada shall not owe any Indebtedness to DEI or any of its Affiliates (other than TDS USA or TDS Canada) of a type that has been, in accordance with past business practice, categorized as an "intercompany payable" on the balance sheets for TDS USA and/or TDS Canada.

(c) To the Knowledge of DEI and Seller, the Business does not have any material liabilities of a nature that are required to be disclosed in accordance with Modified GAAP, except (i) liabilities that are reflected or disclosed on the Pro Forma Balance Sheet, including any contingent liabilities reflected thereon and any liabilities reflected in any notes thereto, (ii) liabilities that were incurred after the Balance Sheet Date in the ordinary course of business consistent with past practice or in accordance with Section 6.3, (iii) liabilities to be incurred after the Balance Sheet Date under Contracts listed on TDS Schedule 4.5, Leases, Company Plans, Disney Plans, this Agreement or the Related Agreements, (iv) liabilities for which DEI and Seller are providing indemnification to Buyer and its Affiliates pursuant to Section 10.2.1, 10.2.2 or 10.2.3 and (v) liabilities that are set forth on TDS Schedule 4.2.2.

4.3 Accounting Records and Accounting Controls; Minute Books. The Company maintains books and records that accurately reflect in all material respects the transactions relating to the Business and accounting controls sufficient to ensure that such transactions are executed in accordance with management's general or specific authorization and recorded in conformity with Modified GAAP, including, without limitation, with respect to the periods for which the Financial Statements were being prepared. Such books and records are true and complete in all material respects. The original minute books of TDS USA and TDS Canada (including those with respect to each predecessor entity) made available to Buyer for review (collectively, the **"Company Minute Books"**) contain records that are true and complete in all material respects of all meetings held of, and corporate or limited liability company action taken by, the member, the shareholder, the board of directors (or comparable governing body) and committees of the board of directors (or comparable governing body) of TDS USA and TDS Canada (including each predecessor entity).

4.4 Tax and Other Returns and Reports. All material Tax Returns required to be filed by or with respect to the Company or its income, operations or assets have been filed. All such Tax Returns were correct and complete in all material respects. All material Taxes due and payable by or with respect to the Company or its income, operations or assets (whether or not shown or required to be shown on any Tax Return) have been paid other than Taxes being contested in good faith and disclosed on TDS Schedule 4.4. All material Taxes required to have been withheld and paid by or with respect to the Company or its operations have been withheld and paid and all material forms required with respect thereto, including, without limitation, IRS Forms W-2 and 1099 and Canadian Forms NR-4 and NR-4 Summary, have been properly completed and filed. DEI, Seller and Buyer agree to utilize, or cause their respective Affiliates to utilize, the standard procedure set forth in Revenue Procedure 96-60 with respect to wage reporting. Adequate provision in accordance with Modified GAAP has been made in the books and records of the Company and in the Pro Forma Balance Sheet for all material Taxes required to be paid or withheld (but not yet paid or withheld) by the Company. Except as set forth on TDS Schedule 4.4, none of DEI, Seller or the Company is in the process of being examined by any Governmental Entity with respect to any Tax Returns of or relating to the Company or its income, operations or assets (other than the issuance of original notices of assessment to TDS Canada by Canadian revenue authorities). Except as set forth on TDS Schedule 4.4, no Governmental Entity has proposed, asserted or assessed, in each case in writing, any deficiency, assessment or claim for Taxes of or relating to the Company or its income, operations or assets that remain unpaid and that, individually or in the aggregate, would constitute a Material Adverse Event. Except as set forth on TDS Schedule 4.4, none of DEI, Seller or the Company has waived any statute of limitations in respect of Taxes of or relating to the Company or its income, operations or assets or agreed to any extension of time with respect to any assessment or deficiency relating to Taxes of or with respect to the Company or its income, operations or assets. Except as set forth on TDS Schedule 4.4, there are no liens on any of the assets of the Company that arose in connection with any failure (or alleged failure) to pay any Tax.

4.5 Contracts.

4.5.1 Contracts; No Breach or Default. The Material Contracts and the Employment Contracts (other than Contracts identified on TDS Schedule 1.1(d) as Retained Assets) existing as of the date hereof are listed on TDS Schedule 4.5, and true copies of the Material Contracts and the Employment Contracts, including all amendments and supplements thereto, have been made available to Buyer. Except as set forth on TDS Schedule 4.5.1: (i) each Material Contract and Employment Contract is in effect to the extent of its terms as of the date hereof and will be in effect to the extent of its terms as of the Closing Date, except for those Material Contracts and Employment Contracts that expire pursuant to their terms or are terminated other than in violation of Section 6.3, 7.4.1(ii) or 7.4.4 prior to the Closing Date; and (ii) neither the Company nor its Affiliates have Knowledge of, or have received written notice declaring, a breach or default by TDS USA or TDS Canada thereunder which breach or default remains uncured beyond the applicable cure period set forth therein, and, to the Knowledge of DEI and Seller, no breach or default by any other party or obligor with respect thereto has occurred thereunder.

4.5.2 No Termination or Modification. Provided that the Consents and Permits listed on TDS Schedule 4.8.2 are obtained prior to Closing, the consummation of the Membership Unit Acquisition, the Share Acquisition and the other transactions contemplated by this Agreement and any other agreements and instruments to be executed and delivered by DEI, Seller and/or any of their Affiliates in connection herewith will not constitute a breach or violation in any material respect of or a default in any material respect under, and will not (and will not give any Person a right to) terminate or modify in any material respect any rights

of, or accelerate or otherwise affect in any material respect any obligation of, TDS USA or TDS Canada under, any Material Contract or Employment Contract.

4.5.3 Authorization and Enforceability. Except as set forth on TDS Schedule 4.5.3, each Material Contract and Employment Contract: (i) has been duly authorized, executed and delivered by TDS USA or TDS Canada, as applicable, and, to the Knowledge of DEI and Seller, the other parties thereto, (ii) remains in full force and effect to the extent of its terms without amendments or modifications not reflected on TDS Schedule 4.5 and made available to Buyer; and (iii) is binding on TDS USA or TDS Canada, as applicable, and, to the Knowledge of DEI and Seller, the other parties thereto in accordance with its terms and applicable Laws, subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws and legal and equitable principles affecting, limiting or relating to creditors rights generally, and general principles of equity, including unconscionability, reasonableness and good faith and fair dealing.

4.6 Leases and Personal Property.

4.6.1 Leases.

(a) Acquired Leases; No Breach or Default. True copies of the Acquired Leases, including all amendments and supplements thereto, have been made available to Buyer, and a list thereof is set forth on TDS Schedule 4.6.1. Except as set forth on TDS Schedule 4.6.1: (i) each Acquired Lease is in effect to the extent of its terms as of the date hereof and will be in effect to the extent of its terms as of the Closing Date, except for those Acquired Leases that expire pursuant to their terms or are terminated other than in violation of Section 6.3 or 6.7 prior to the Closing Date; and (ii) neither the Company nor its Affiliates have Knowledge of, or have received written notice declaring, a breach or default by TDS USA or TDS Canada under any Acquired Lease, which breach or default remains uncured beyond the applicable cure period set forth in the applicable Acquired Lease, and, to the Knowledge of DEI and Seller, no breach or default by any other party or obligor with respect to any Acquired Lease (including the Landlord thereunder) has occurred thereunder.

(b) No Termination or Modification. Provided that the Consents and Permits listed on TDS Schedule 4.8.2 are obtained prior to Closing, the consummation of the Membership Unit Acquisition, the Share Acquisition and the other transactions contemplated by this Agreement and any other agreements and instruments to be executed and delivered by DEI, Seller and/or any of their Affiliates in connection herewith will not constitute a breach or violation in any material respect of or a default in any material respect under, and will not (and will not give any Person a right to) terminate or modify in any material respect any rights of, or accelerate or otherwise affect in any material respect any obligation of, TDS USA or TDS Canada under, any Acquired Lease.

(c) Authorization and Enforceability. Except as set forth on TDS Schedule 4.6.1, each of the Acquired Leases: (i) has been duly authorized, executed and delivered by TDS USA or TDS Canada, as applicable, and, to the Knowledge of DEI and Seller, the other parties thereto, (ii) remains in full force and effect to the extent of its terms without amendments or modifications not reflected on TDS Schedule 4.6.1 and made available to Buyer; and (iii) is binding on TDS USA or TDS Canada, as applicable, and, to the Knowledge of DEI and Seller, the other parties thereto, in accordance with its terms and applicable Laws, subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws and legal and equitable principles affecting, limiting or relating to creditors rights generally, and general principles of equity, including unconscionability, reasonableness and good faith and fair dealing.

(d) Eminent Domain. The Company has not received written notice of any proceedings in eminent domain, expropriation, condemnation or other similar proceedings that are pending, and, to the Knowledge of DEI and Seller, there are no such proceedings threatened, affecting any portion of the real property leased under the Acquired Leases.

(e) Owned Real Property. The Company does not own any real property used in the Business.

(f) No Assignment. TDS USA or TDS Canada is the tenant under each Acquired Lease and neither TDS USA nor TDS Canada has Transferred its rights or interests under any Acquired Lease.

(g) Guarantees. Other than the U.K. Lease Guarantees and any guarantees of any Acquired Leases listed on TDS Schedule 4.6.1, neither TDS USA nor TDS Canada has provided any guarantees with respect to any lease for real property.

(h) Company Remodel Plans. Copies of the Company Remodel Plans that are true and complete in all material respects have been made available to Buyer prior to the date hereof.

4.6.2 Personal Property. The Company has good and valid title to its owned personal property assets used in the Business, free and clear of any Encumbrances, except for Permitted Encumbrances.

4.7 Non-IT Intellectual Property and Information Technology.

4.7.1 Non-IT Intellectual Property; Disney Information Technology. As of the Closing, the Company will not own, license, control or otherwise possess any rights to use any Non-IT Intellectual Property (except as may be provided in the License and Conduct of Business Agreement) or Disney Information Technology.

4.7.2 Company Information Technology. The Company owns or possesses adequate and enforceable rights to use the Company Information Technology in connection with the Business as currently conducted. Except as set forth on TDS Schedule

4.7.2, the Company has not granted to any unrelated Person any license, sublicense or other similar right relating in whole or in part to the use of the Company Information Technology. Except as set forth on TDS Schedule 4.9, no Action alleging that the Company's use or proposed use of the Company Information Technology infringes in any material respect upon or violates in any material respect the rights of any Person in or to such Company Information Technology is pending or, to the Knowledge of DEI and Seller, threatened against or affecting TDS USA or TDS Canada or any of their respective properties or assets. To the Knowledge of DEI and Seller, the Company has not received written notice that its use of the Company Information Technology infringes upon or violates the rights of any Person in or to such Company Information Technology. Provided that the Consents and Permits listed on TDS Schedule 4.8.2 are obtained prior to Closing, except as set forth on TDS Schedule 4.7.2, the execution by DEI, Seller and/or any of their Affiliates, as applicable, of this Agreement, the Related Agreements and the other agreements and documents to be executed by them in connection herewith or therewith, and the consummation of the transactions contemplated hereby or thereby, will not impair, in any material respect, the right of the Company to use the Company Information Technology.

4.8 Authorization; No Conflicts.

4.8.1 Authorization. All necessary action on the part of each of DEI, Seller and their Affiliates, as applicable, has been duly and validly taken to authorize the execution, delivery and performance of this Agreement, the Related Agreements and any other agreements and instruments to be executed and delivered by it in connection herewith. This Agreement has been duly executed and delivered by DEI and Seller and constitutes the legally valid and binding obligation of each of them, enforceable against each of them in accordance with its terms, and the Related Agreements, when executed and delivered by DEI, Seller and/or their Affiliates who are parties thereto, will constitute the legally valid and binding obligations of such parties, enforceable against such parties in accordance with their respective terms, in each case subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws and legal and equitable principles affecting, limiting or relating to creditors rights generally, and general principles of equity, including unconscionability, reasonableness and good faith and fair dealing.

4.8.2 No Conflicts. Provided that, prior to the Closing, (a) the Consents required to be obtained from third Persons listed on TDS Schedule 4.8.2 (excluding any Consents under Leases for Non-Transferable Stores, Expired Lease Stores and Deferred Stores) and the Permits required to be obtained from any Governmental Entity listed on TDS Schedule 4.8.2 (including, without limitation, any required approval under the Investment Canada Act) are obtained, (b) any required filings under the Hart-Scott-Rodino Act have been made and the applicable waiting period thereunder shall have expired or been terminated, and (c) any consents, waivers, filings, authorizations or other approvals as may be required under applicable Law have been obtained, neither the execution, delivery and performance by DEI, Seller and/or any of their Affiliates, as applicable, of this Agreement, the Related Agreements or any other agreements and instruments to be executed and delivered by them in connection herewith or therewith nor the consummation of the transactions contemplated hereby or thereby will: (i) violate any provision of the charter, articles, bylaws, operating agreement or similar organizational or governing documents of DEI, Seller, any such Affiliate, TDS USA or TDS Canada; (ii) violate in any material respect any Law to which DEI, Seller, any such Affiliate, TDS USA or TDS Canada is subject; (iii) violate in any material respect any Material Contract, Employment Contract or Acquired Lease; or (iv) result in the imposition of any Encumbrance (other than Permitted Encumbrances) against TDS USA or TDS Canada or any of their respective properties.

4.9 Legal Proceedings. Except as set forth on TDS Schedule 4.9, there is no Action pending or, to the Knowledge of DEI and Seller, threatened against TDS USA or TDS Canada (i) the sole purpose of which is to obtain equitable relief to enjoin TDS USA or TDS Canada from engaging in any particular activity, (ii) seeking damages in excess of $750,000, (iii) that otherwise would constitute a Material Adverse Event or (iv) that has or might reasonably be expected to have a material adverse effect on the respective abilities of DEI, Seller or any of their Affiliates to perform their respective obligations under this Agreement or the Related Agreements, as applicable, or the transactions contemplated hereby or thereby.

4.10 Permits. The Company holds all Permits that are required to permit the Company to conduct the Business, other than Permits the absence of which would not constitute a Material Adverse Event.

4.11 Compliance with Law. The Business is being conducted in accordance with applicable Laws, except for such noncompliance as would not constitute a Material Adverse Event. Except as set forth on TDS Schedule 4.11, to the Knowledge of DEI and Seller, none of DEI, Seller or the Company has received notice of non-compliance with applicable Laws from any Governmental Entity since January 1, 2003.

4.12 Employee Benefit Plans.

4.12.1 Disney Plans. Buyer has no obligation to contribute to, or any liability in respect of, any Disney Plan and, following the Closing, the Company will have no obligation to contribute to, or any liability in respect of, any Disney Plan.

4.12.2 Employee Benefit Plan Information. TDS Schedule 4.12.2 sets forth a true and complete list of all material Employee Benefit Plans in which Continuing Employees participate. The Company has made available to Buyer: (i) with respect to each Employee Benefit Plan listed on TDS Schedule 4.12.2, the current summary plan description of or, if the Company is not required to prepare, file or distribute a summary plan description, all documents that set forth the terms of such Employee Benefit Plan and any related trust, or a written description of such Employee Benefit Plan; (ii) the OPEIU Agreement; and (iii) the current Company employee policy manual.

4.12.3 Company Plans. As of the date hereof, there are two (2) Company Plans, which are listed on TDS Schedule 4.12.3. As of the Closing, there shall be no Company Plans.

4.12.4 No HIPAA Violations. Neither the Company, nor any employee, officer, director, administrator or agent thereof, is or has been in violation of the transaction and code set rules under Sections 1172 to 1175 of HIPAA or the HIPAA privacy rules under 45 C.F.R. Part 160 and Subparts A and E of Part 164. No penalties have been imposed on the Company, any Company Plan, or any employee, officer, director, administrator or agent thereof, under Section 1176 or 1177 of HIPAA.

4.12.5 Parachute Payments. The Company is not obligated under any Employee Benefit Plan or any other agreement to pay any amount that would subject the recipient of such payment to any excise tax under Section 4999 of the Code.

4.12.6 Prohibited Transactions. As of the date hereof, the Company has not engaged in any material transaction in violation of Section 404 or 406 of ERISA or any material "prohibited transaction" as defined in Section 4975(c)(1) of the Code, for which no exemption exists under Section 408 of ERISA or Section 4975(c)(2) of the Code.

4.12.7 Continuing Employee Schedule. The information contained on TDS Schedule 7.4.1 pertaining to the current position and length of service of each Continuing Employee listed thereon is true and complete in all material respects.

4.13 Environmental Compliance. Except as set forth on TDS Schedule 4.13, to the Knowledge of DEI and Seller, the Business is in compliance with Existing Environmental Requirements, except for such noncompliance as would not constitute a Material Adverse Event.

4.14 No Brokers or Finders. No agent, broker, finder, investment or commercial banker or other Person or firm engaged by or acting on behalf of DEI or any of its Affiliates in connection with the negotiation, execution or performance of this Agreement, the Related Agreements or the transactions contemplated hereby or thereby is or will be entitled to any broker's or finder's or similar fee or other commission as a result of this Agreement, the Related Agreements or such transactions, except for any fee that may become payable to Bear, Stearns & Co. Inc. or Goldman, Sachs & Co., for which DEI and/or Seller shall have sole responsibility.

4.15 Retained Assets. Except as set forth on TDS Schedule 1.1(d), the Company does not own, lease, license, control or hold any properties, assets or rights that constitute Retained Assets.

4.16 Absence of Certain Changes and Events. From the Balance Sheet Date through the date hereof, except as set forth on TDS Schedule 4.16 or as otherwise disclosed in the TDS Schedules or as expressly contemplated by this Agreement (including, without limitation, Section 2.1), and except as may have been required by applicable Law and except for any actions that do not affect or relate to the Business, the Company has conducted the Business only in the ordinary course and the Company has not:

4.16.1 Agreed to incur any obligation or liability of the Business outside the ordinary course of business that individually calls for payment by the Company of more than $250,000 in any specific case or $750,000 in the aggregate, other than under any Material Contracts, Employment Contracts, Leases or Retained Asset Agreements; or

4.16.2 Transferred any non-Lease assets of the Business owned by the Company (i) to Seller or DEI or their Affiliates, except for (A) distributions or other Transfers of the Retained Assets, (B) distributions or dividends in the form of cash and/or cash equivalents, (C) Transfers of cash and/or cash equivalents to pay intercompany loans or other intercompany debt and (D) Transfers of Disney Dollars or Disney Theme Park Passports; or (ii) to any third party, except for dispositions of property to third parties (A) in the ordinary course of business or (B) not greater than $250,000 in any specific case or $1,000,000 in the aggregate outside the ordinary course of business; or

4.16.3 made any capital expenditure commitments (other than New Capital Expenditure Requirements) with respect to the Business of more than $650,000 individually or $2,000,000 in the aggregate; or

4.16.4 granted any increase in the salary or benefits of any Continuing Employees, other than (i) regularly scheduled salary or benefit increases in the ordinary course of business, (ii) increases in salary and benefits in the ordinary course of business in connection with promotions and/or increases of responsibilities or duties, (iii) payment or agreement to pay regularly scheduled bonuses in the ordinary course of business, and (iv) with respect to Employment Contracts as set forth in Section 6.3.9; or

4.16.5 discontinued the Retention Program with respect to any Continuing Employee; or

4.16.6 acquired, directly or indirectly, substantially all of the assets of, or a controlling equity interest in, any Person, which assets or equity interests do not constitute Retained Assets, or entered into any commitment to do the same; or

4.16.7 incurred any Indebtedness other than Indebtedness (i) consisting of intercompany Indebtedness that will not be an obligation of the Company as of the Closing, (ii) incurred in the ordinary course of business consistent with past practice, such as trade payables and accruals, or (iii) incurred in connection with actions permitted to be taken under Section 6.3; or

4.16.8 prepaid any expense, except for any such prepayments (i) made in the ordinary course of business or (ii) not greater than $250,000 in any specific case or $500,000 in the aggregate outside the ordinary course of business; or

4.16.9 agreed to take (or cause to be taken) any actions described in Sections 4.16.1 through 4.16.8.

4.17 Title to Assets. The Company has good title to all assets purported to be owned by it and used solely in the Business, free and clear of all Encumbrances, except for Permitted Encumbrances (provided that no representation or warranty is made or deemed to be made hereby with respect to any Retained Assets). Other than as contemplated by this Agreement, the Related

Agreements, any Acquired Lease or any Material Contract, no material property improvements (including leasehold improvements), material equipment or other material tangible assets owned by the Company and used solely in the Business (and not constituting a Retained Asset) are subject to any commitment or other arrangement for their sale or use by any Affiliate of Seller or DEI or third parties.

4.18 Labor Matters.

4.18.1 Except as set forth on TDS Schedule 4.18, in connection with the Business, (i) the Company is not a party to any labor agreement with respect to the Continuing Employees with any labor organization, group or association and (ii) since January 1, 2003, the Company has not experienced any attempt by a labor organization to organize or represent any of the Continuing Employees. In connection with the Business, the Company is in compliance in all material respects with all applicable Laws respecting employment practices, terms and conditions of employment and wages and hours and is not engaged in any unfair labor practice. There is no unfair labor practice charge or complaint against the Company pending before the National Labor Relations Board arising out of the Company's activities with respect to the Business and, to the Knowledge of DEI and Seller, there are no facts that would give rise thereto. There is no labor strike or labor disturbance pending or, to the Knowledge of DEI and Seller, threatened against the Company in connection with the Business. The Company has not experienced any material work stoppage in connection with the Business since January 1, 2003.

4.18.2 There are no collective bargaining agreements currently in effect that cover any Employees of the Business or any retired Employees of the Business other than the Agreement dated as of August 1, 2004 between DEI and Office and Professional Employees International Union Local No. 140 (the **"OPEIU Agreement"**). None of the Employees of the Business who are covered by the OPEIU Agreement either as of the date of this Agreement or as of the Closing Date are Continuing Employees.

4.19 No Other Agreements to Sell. Neither Seller nor DEI nor their Affiliates have any legal obligation, absolute or contingent, to any Person other than Buyer to sell the Shares and the Membership Units or to enter into any agreement with respect thereto.

4.20 Payments. During the twelve (12) month period immediately preceding the date hereof, to the Knowledge of DEI and Seller, neither the Company nor any of its officers or directors has, directly or indirectly, in connection with the Business, made any material payment to any supplier of the Company or any officer, director, partner, employee or agent of any such supplier or any governmental official that, when made, was illegal under applicable Law.

4.21 Bank Accounts. TDS Schedule 4.21 sets forth a list of each bank in which the Company maintains an account or safe deposit box and the corresponding number of each such account or safe deposit box.

4.22 DWS. As of the date hereof, DWS has fixed assets with a book value of at least One Hundred Million Dollars ($100,000,000).

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to DEI and Seller as follows:

5.1 Organization; Capitalization.

5.1.1 Organization and Authority of USA Purchaser. USA Purchaser is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware. USA Purchaser has the requisite power and authority to (a) execute and deliver this Agreement and the documents and instruments contemplated hereby, (b) perform and comply with all of the terms, conditions and covenants to be performed and complied with by it hereunder and thereunder and (c) own its properties and assets and carry on its business as contemplated by this Agreement and the License and Conduct of Business Agreement. USA Purchaser is wholly owned by TCP and was newly formed for the sole purpose of entering into and consummating the transactions contemplated by this Agreement, and USA Purchaser has and will have no assets or operations other than acting as a holding company for New TDS LLC and the Membership Units and the indirect parent company for Canadian Purchaser.

5.1.2 Incorporation and Authority of New TDS LLC and New TDS Canada.

(a) New TDS LLC. New TDS LLC is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware. New TDS LLC has the requisite power and authority to (i) execute and deliver the documents and instruments contemplated hereby, (ii) enter into, perform its obligations in connection with and consummate the TDS USA Merger, and (iii) own its properties and assets and carry on its business as contemplated by this Agreement and the License and Conduct of Business Agreement and as intended to be conducted following the TDS USA Merger. New TDS LLC is wholly owned by USA Purchaser and was newly formed for the sole purpose of serving as the parent for Canadian Purchaser and entering into and consummating the TDS USA Merger and acting as a licensee under the License and Conduct of Business Agreement, and New TDS LLC has and will have no assets or operations other than, following the TDS USA Merger, those associated with the Business.

(b) New TDS Canada. New TDS Canada is a corporation duly incorporated, validly existing and in good standing under the laws of the Province of New Brunswick. As of the Closing Date, New TDS Canada (i) will have the requisite power and

authority to (A) execute and deliver the documents and instruments contemplated hereby, (B) enter into, perform its obligations in connection with and consummate the Canada Reincorporation and (C) own its properties and assets and carry on its business as contemplated by this Agreement and the License and Conduct of Business Agreement and as intended to be conducted following the Canada Reincorporation; and (ii) will be a wholly owned subsidiary of Canadian Purchaser, newly formed for the sole purpose of entering into and consummating the Canada Reincorporation and acting as licensee under the License and Conduct of Business Agreement. New TDS Canada has and will have no assets or operations other than, following the Canada Reincorporation, those associated with the Business.

5.1.3 Incorporation and Authority of Canadian Purchaser. Canadian Purchaser is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Canadian Purchaser has the requisite power and authority to (a) execute and deliver this Agreement and the documents and instruments contemplated hereby, (b) perform and comply with all of the terms, conditions and covenants to be performed and complied with by it hereunder and thereunder and (c) own its properties and assets and carry on its business as contemplated by this Agreement and the License and Conduct of Business Agreement. Canadian Purchaser is a wholly owned subsidiary of New TDS LLC that was newly formed for the sole purpose of entering into and consummating the transactions contemplated by this Agreement, and Canadian Purchaser has and will have no assets or operations other than acting as a holding company for New TDS Canada and the Shares.

5.1.4 Incorporation and Authority of TCP. TCP is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. TCP has the requisite power and authority to (a) execute and deliver the Acquisition Agreement Guarantee and the documents and instruments contemplated thereby, (b) perform and comply with all of the terms, conditions and covenants to be performed and complied with by TCP thereunder and (c) own its properties and assets and carry on its business as currently conducted.

5.1.5 Capitalization; Outstanding Securities. The authorized capital of USA Purchaser consists of Ten (10) units of membership interest, all of which are outstanding. The authorized capital of New TDS LLC consists of Ten (10) units of membership interest, all of which are outstanding. The authorized capital of Canadian Purchaser consists of One Thousand (1,000) shares of common stock, all of which are outstanding. The authorized share capital of New TDS Canada consists of an unlimited number of common shares, of which One Hundred (100) are issued and outstanding. All Outstanding USA Purchaser Securities (a) are, and as of the Closing Date will be, solely owned by TCP, (b) have been, and as of the Closing Date will have been, duly authorized and validly issued, and (c) are, and as of the Closing Date will be, fully paid and non-assessable and held by TCP free and clear of all Encumbrances. All Outstanding New TDS LLC Securities (aa) are, and as of the Closing Date will be, solely owned by USA Purchaser, (bb) have been, and as of the Closing Date will have been, duly authorized and validly issued, and (cc) are, and as of the Closing Date will be, fully paid and non-assessable and held by USA Purchaser free and clear of all Encumbrances. All Outstanding Canadian Purchaser Securities (x) are, and as of the Closing Date will be, solely owned by New TDS LLC, (y) have been, and as of the Closing Date will have been, duly authorized and validly issued, and (z) are, and as of the Closing Date will be, fully paid and non-assessable and held by New TDS LLC free and clear of all Encumbrances. As of the Closing Date, all Outstanding New TDS Canada Securities (xx) will be solely owned by Canadian Purchaser, (yy) will have been duly authorized and validly issued, and (zz) will be fully paid and non-assessable and held by Canadian Purchaser free and clear of all Encumbrances. There are no outstanding options, warrants, rights or other Securities convertible into, or exercisable for, USA Purchaser Securities, Canadian Purchaser Securities, New TDS LLC Securities or New TDS Canada Securities. Buyer Schedule 5.1.5(a) sets forth a true and complete list of (i) all Outstanding TCP Securities as of the date hereof and (ii) to Buyer's Knowledge, the names of the beneficial holders of five percent (5%) or more of such Outstanding TCP Securities and the amount of Outstanding TCP Securities held by each such holder. All Outstanding TCP Securities (1) have been, and as of the Closing Date will have been, duly authorized and validly issued, and (2) are, and as of the Closing Date will be, fully paid and non-assessable. Except as set forth on Buyer Schedule 5.1.5(a), there are no outstanding options, warrants, rights or other Securities convertible into, or exercisable for, TCP Securities. The Outstanding TCP Securities as of the Closing Date and, to Buyer's Knowledge, the names of the beneficial holders of five percent (5%) or more of such Outstanding TCP Securities and the amount of Outstanding TCP Securities held by each such holder shall be as set forth on Buyer's Closing Capitalization Table delivered to DEI and Seller pursuant to Section 6.4.1. Except as set forth on Buyer Schedule 5.1.5(b), none of USA Purchaser, New TDS LLC or Canadian Purchaser has, and as of the Closing Date none of USA Purchaser, New TDS LLC, Canadian Purchaser or New TDS Canada will have, any direct or indirect Subsidiaries nor any other debt or equity investments in any other Person, and TCP does not have, and as of the Closing Date will not have, any direct or indirect Subsidiaries nor any other debt or equity investments in any other Person that will be engaged after the Closing in the Business in any manner.

5.1.6 Buyer's Governing Documents. Buyer has heretofore delivered (or, in the case of the bylaws of New TDS Canada, will deliver prior to the Closing) to DEI and Seller true and complete copies of (i) the charter documents (articles or certificate of incorporation or other), bylaws, limited liability company agreements, operating agreements and securityholders agreements of each of USA Purchaser, New TDS LLC, Canadian Purchaser, New TDS Canada, TCP and any Parent Affiliate of TCP as in effect on the date hereof (or, in the case of the bylaws of New TDS Canada, as will be in effect on the Closing Date) and (ii) other governing documents or Contracts pertaining to the management or operation of USA Purchaser, New TDS LLC, Canadian Purchaser, New TDS Canada, TCP and/or TCP's Parent Affiliates or the ownership of any Securities thereof (collectively, "Buyer's Governing Documents"). There have been no amendments, restatements or modifications to Buyer's Governing Documents not delivered to DEI and Seller.

5.2 Authorization; No Conflicts.

5.2.1 Authorization. All necessary action on the part of each of USA Purchaser and Canadian Purchaser and each of its respective Affiliates, as applicable, has been duly and validly taken to authorize the execution, delivery and performance of this

Agreement, the Related Agreements, the Acquisition Agreement Guarantee, the TCP Guaranty and Commitment, and any other agreements and instruments to be executed and delivered by it in connection herewith. This Agreement and the Acquisition Agreement Guarantee have been duly executed and delivered by Buyer and TCP, respectively, and constitute the legally valid and binding obligations of Buyer and TCP, respectively, enforceable against Buyer and TCP, respectively, in accordance with their respective terms, and the Related Agreements and the TCP Guaranty and Commitment, when executed and delivered by Buyer and/or its Affiliates who are parties thereto, will constitute the legally valid and binding obligations of such parties, enforceable against such parties in accordance with their respective terms, in each case subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws and legal and equitable principles affecting, limiting or relating to creditors rights generally, and general principles of equity, including unconscionability, reasonableness and good faith and fair dealing. The Membership Unit Acquisition and the Share Acquisition have been duly approved by all necessary action on the part of each of USA Purchaser and Canadian Purchaser, including, as applicable, approval of TCP, as the sole member of USA Purchaser, and the Board of Directors of Canadian Purchaser.

5.2.2 No Conflicts. Provided that, prior to the Closing, (a) the Permits required to be obtained from any Governmental Entity listed on TDS Schedule 4.8.2 (including, without limitation, any required approval under the Investment Canada Act) are obtained, (b) any required filings under the Hart-Scott-Rodino Act have been made and the applicable waiting period thereunder shall have expired or been terminated, and (c) any consents, waivers, filings, authorizations or other approvals as may be required under applicable Law have been obtained, then neither the execution, delivery and performance by Buyer and/or any of its Affiliates, as applicable, of this Agreement, the Related Agreements, the Acquisition Agreement Guarantee, the TCP Guaranty and Commitment, or any other agreements or instruments to be executed and delivered by them in connection herewith or therewith nor the consummation of the transactions contemplated hereby or thereby will: (i) violate any provision of Buyer's or any such Affiliate's articles, charter, bylaws, operating agreement or similar organizational or governing documents; (ii) violate any Law to which Buyer or any such Affiliate is subject that would have a material adverse effect on Buyer's or any such Affiliate's ability to perform its obligations hereunder or thereunder; (iii) violate any material Contract to which Buyer or any such Affiliate is a party or is subject, including, without limitation, the Wells Fargo Credit Facility, the Toronto-Dominion Facility and the Merchant Services Agreement; or (iv) result in the imposition of any material Encumbrance against Buyer or any such Affiliate or any of their respective properties. Without limiting the foregoing, Buyer hereby represents and warrants to DEI and Seller that (x) the Company and the Business to be Transferred to Buyer (including the Acquired Stores and all properties, assets, rights, liabilities and obligations relating to the conduct and operation of the Business and such Acquired Stores) shall not be subject to or in any manner encumbered by the Wells Fargo Credit Facility or the Toronto-Dominion Facility and shall not constitute collateral or any other security interest thereunder, and (y) the Company and the Business to be Transferred to Buyer (including the Acquired Stores) shall not be subject to any provisions of the Merchant Services Agreement (including such provisions as may relate to promotion of TCP's private label credit card or related credit card program, the issuance, sponsorship, marketing or acceptance of, or other participation with respect to, any other private label or co-branded credit card, or the use or sharing of customer lists or similar information).

5.3 Legal Proceedings. There is no Action pending or, to the Knowledge of Buyer, threatened against or affecting Buyer or any of its Affiliates or any of their respective properties or assets that has or might reasonably be expected to have a material adverse effect on the respective abilities of Buyer or any of its Affiliates to perform their respective obligations under this Agreement, the Related Agreements, the Acquisition Agreement Guarantee, or the TCP Guaranty and Commitment, as applicable, or the transactions contemplated hereby or thereby.

5.4 Buyer's Financing and Liquidity. Buyer Schedule 5.4 sets forth, as of the date hereof, (a) a true and complete list of Buyer's and TCP's anticipated sources of funds (other than those set forth on Buyer Schedule 5.1.5(a)) to acquire the Membership Units and the Shares and pay all other amounts required to be paid by Buyer and/or TCP under this Agreement, the Related Agreements, the Acquisition Agreement Guarantee and the TCP Guaranty and Commitment, including the identity of each such source and, if available, the approximate amount expected to be funded by each such source and a summary of the material terms and conditions on which Buyer and/or TCP expect to obtain such funds, and (b) Buyer's and TCP's good faith estimate of their internal and external sources of liquidity for a period of two (2) years following the Closing Date, including a reasonably detailed description of the provider and, if available, the type, material terms and amount of each such source of liquidity. Buyer and TCP will have available, on the Closing Date, the Working Capital Deferred Delivery Date, the Subsequent Closing Date and the date on which final payments are due under Section 2.3.2(c), sufficient funds to enable them to consummate the Membership Unit Acquisition and the Share Acquisition and pay all other amounts required to be paid by them as of the Closing Date, the Working Capital Deferred Delivery Date, the Subsequent Closing Date and the date on which final payments are due under Section 2.3.2(c), respectively, under this Agreement, the Related Agreements, the Acquisition Agreement Guarantee and the TCP Guaranty and Commitment. The funds used by Buyer and TCP to consummate the Membership Unit Acquisition and the Share Acquisition and pay such other amounts shall have been drawn under the Company Credit Facility or contributed, provided or otherwise made available to Buyer or TCP as set forth on Buyer's Closing Capitalization Table delivered to DEI and Seller pursuant to Section 6.4.1. As of the Closing Date, Buyer's Liquidity Plan and the sources of liquidity identified therein shall be as reported to DEI and Seller pursuant to Section 6.4.2.

5.5 No Brokers or Finders. No agent, broker, finder, investment or commercial banker or other Person or firm engaged by or acting on behalf of Buyer or any of its Affiliates in connection with the negotiation, execution or performance of this Agreement, the Related Agreements, the Acquisition Agreement Guarantee, the TCP Guaranty and Commitment or the transactions contemplated hereby or thereby is or will be entitled to any broker's or finder's or similar fees or other commission as a result of this Agreement, the Related Agreements, the Acquisition Agreement Guarantee, the TCP Guaranty and Commitment or such transactions, except for any fee that may become payable to Peter J. Solomon Company, for which Buyer shall have sole responsibility.

5.6 Investment Representations. Buyer understands that the Membership Units and the Shares have not been registered under the Securities Act and are being offered and transferred under an exemption from registration contained in the Securities Act based in part upon the following representations of Buyer: (i) Buyer is an "accredited investor" within the meaning of Regulation D under the Securities Act; (ii) Buyer is acquiring the Membership Units and the Shares for Buyer's own account for investment purposes only, and not with a view towards their distribution in violation of the Securities Act or applicable "blue sky" laws of any state; and (iii) by reason of its business or financial experience, Buyer has the capacity to protect its own interests in connection with the transactions contemplated by this Agreement.

5.7 Non-Canadian; Non-Resident of Canada. Neither USA Purchaser nor Canadian Purchaser is a Canadian within the meaning of the Investment Canada Act, and each of USA Purchaser and Canadian Purchaser is a non-resident of Canada within the meaning of the Income Tax Act (Canada).

## ARTICLE VI
## COVENANTS WITH RESPECT TO CONDUCT OF DEI, SELLER, COMPANY AND BUYER PRIOR TO CLOSING

From the date hereof through and including the Closing Date (or, to the extent specifically provided in this Article VI, including, without limitation, Section 6.7, following the Closing Date), Buyer, DEI and Seller will, and DEI and/or Seller will cause the Company to, comply with the applicable terms and provisions of this Article VI.

6.1 Access; Books and Records.

6.1.1 Upon reasonable notice given in accordance with this Agreement from Buyer to DEI and Seller, DEI and Seller will authorize and permit Buyer and its Representatives (and other Persons acting on behalf of Buyer (including Buyer's lenders) that (i) sign a confidentiality agreement with DEI and/or its Affiliates on terms substantially the same as those contained in the Confidentiality Agreement and (ii) are approved by DEI and Seller in their respective business judgment) to have reasonable access during normal business hours, in such manner as will not interfere with the conduct of the business of the Company and subject to the indemnification obligations set forth in Section 6.1.3, to all of the Company's books, records, Tax Returns (other than consolidated or combined Tax Returns that include the income and activities of entities other than the Company, unless and only to the extent that DEI and Seller determine in their respective sole discretion that any portion thereof relates solely to the income and activities of TDS USA or TDS Canada and it is practical to provide such limited portion to Buyer) and other information pertaining to the Business as Buyer may from time to time reasonably request, and, at Buyer's expense, to make copies of such books, records and other documents, and to discuss the Business with the officers, accountants and counsel of the Company as reasonably requested by Buyer, and, upon at least three (3) Business Days' written notice from Buyer to DEI and Seller, to enter, inspect and investigate the Acquired Stores. DEI and Seller hereby agree and acknowledge that pursuant to and in accordance with the preceding sentence, they shall, upon request by Buyer, provide access to the following specific information pertaining to the Business (provided that (a) DEI or Seller has the appropriate personnel to extract, collect and transmit such specific information and (b) any incremental costs incurred by DEI or its Affiliates to extract, collect and transmit such specific information shall be paid by Buyer within ten (10) Business Days after presentation of an invoice therefor), and Buyer acknowledges that any analysis of such information shall be performed by Buyer and not by DEI or its Affiliates: (i) monthly and weekly data, by department, regarding units and cartons of merchandise shipped by or on behalf of the Company during the full twelve (12) months most recently completed prior to the date hereof and (ii) monthly and weekly data, by department, regarding units and cartons of merchandise received by the Company during the full twelve (12) months most recently completed prior to the date hereof. Any information provided to or on behalf of Buyer or any Person acting on its behalf pursuant to this Section 6.1 will be subject to the provisions of Section 11.9.

6.1.2 Neither Buyer nor any Person acting on its behalf shall make any contact with the vendors, suppliers, landlords or employees (other than any Seller Consent Officer) of the Company or any of its Affiliates or other parties to any Contract or Lease with the Company or any of its Affiliates or conduct any environmental sampling or invasive or destructive testing, except with the express prior written consent of one (1) of the Seller Consent Officers (whether such written consent has been given prior to, or is given after, the date hereof), which consent (i) may relate either to a particular communication or to a process by which certain communications may occur, (ii) may be granted or withheld in the sole discretion of the applicable Seller Consent Officer, and (iii) may be provided by any Seller Consent Officer via email or in any other written format; provided, however, that Seller and DEI shall permit Buyer to communicate with Employees and landlords and vendors of the Company in the presence, or with the participation, of a duly authorized representative of DEI or any of its Affiliates. Nothing herein will obligate DEI, Seller or the Company to take actions that would violate the terms of any applicable Law or any Contract or Lease to which the Company or any of its Affiliates is a party or by which the Company, any of its Affiliates or the assets of the Company or any of its Affiliates are bound.

6.1.3 Buyer shall defend (either with counsel satisfactory to DEI, or at the option of DEI, DEI and its Affiliates may conduct their own defense at Buyer's sole cost and expense), indemnify and hold DEI and its Affiliates harmless from and against any and all Loss arising directly or indirectly from, out of or based on Buyer's exercise of its rights under this Section 6.1, whether by Buyer itself or by any Person acting on Buyer's behalf.

6.2 Financial Statements; Updates to TDS Schedules; Post-Closing Merchandise Plan.

6.2.1 Financial Statements. DEI or Seller will furnish to Buyer (i) within ten (10) Business Days after the last day of each fiscal month of the Company, monthly unaudited combined balance sheets and statements of operations of the Business for the preceding fiscal month of the Company, which shall be prepared in the ordinary course of business consistent with past practice

(except, in the case of past practice, as disclosed therein with respect to any particular item(s)) but shall not necessarily be prepared in accordance with GAAP or Modified GAAP, and (ii) within fifteen (15) Business Days after the last day of each fiscal quarter of the Company, quarterly unaudited combined balance sheets, statements of operations and cash flows of the Business for the preceding fiscal quarter of the Company, which shall fairly present the financial condition and results of operation of the Business and shall be prepared in all material respects in conformity with Modified GAAP during the periods covered (except, in the case of Modified GAAP, as disclosed therein with respect to any particular item(s)).

6.2.2 Updates to TDS Schedules. No later than five (5) Business Days prior to the Closing Date, DEI and Seller shall be entitled to deliver to Buyer an amendment of any portion of the TDS Schedules that relate to the representations and warranties of DEI and Seller under this Agreement to reflect any additions thereto that occurred or were discovered between the date of this Agreement and the Closing Date (any such additions, the **"Supplemental Disclosure Items"**). Each of DEI, Seller and Buyer acknowledges and agrees that (i) subject to subparagraph (ii) below, the Supplemental Disclosure Items shall be deemed to be incorporated into such TDS Schedules effective as of the date of this Agreement as if actually set forth therein on the date of this Agreement solely for purposes of determining whether the condition contained in subparagraph (a) of Section 8.2.1 has been satisfied; (ii) if any Supplemental Disclosure Item relates to an action or omission on the part of DEI or Seller that would constitute a breach of Section 6.3, 6.7, 7.4.1(ii) or 7.4.4, the addition of such Supplemental Disclosure Item to the TDS Schedules shall not be deemed to cure such breach; and (iii) the indemnification obligations of DEI and Seller with respect to the Supplemental Disclosure Items shall be determined pursuant to Section 10.2.1(ix) rather than Section 10.2.1(i).

6.2.3 Post-Closing Merchandise Plan.

(a) Preparation of Draft Post-Closing Merchandise Plan. In order to better ensure that the Business is not diminished or wasted during the period prior to the Closing Date, DEI and Seller shall prepare (or shall cause to be prepared) one (1) or more formalized merchandise plans setting forth information relating to merchandise categories and styles, assortment and manufacturers to be employed by the Company, and the budget therefor, that relate or may relate to any period after the Closing Date and that affect or may affect the Business to be acquired by Buyer pursuant to this Agreement (each such formalized merchandise plan, a **"Draft Post-Closing Merchandise Plan"**). DEI and Seller shall deliver (or shall cause to be delivered) to Buyer, upon preparation thereof, each such Draft Post-Closing Merchandise Plan. If and when a Draft Post-Closing Merchandise Plan becomes a Final Post-Closing Merchandise Plan pursuant to subparagraph (b) or (c) below, then DEI and Seller shall, subject to the provisions contained in this Section 6.2.3, cause the Company to comply in all material respects with such Final Post-Closing Merchandise Plan.

(b) Final Post-Closing Merchandise Plans and Changes to Final Post-Closing Merchandise Plans Prior to Buyer's Election Under Subparagraph (c). Unless and until Buyer makes the election specified in subparagraph (c) of this Section 6.2.3 (which election shall be invalid during any period in which any filing or matter under the Hart-Scott-Rodino Act is pending) in the manner provided therein, the provisions of this subparagraph (b) shall apply.

(i) Final Post-Closing Merchandise Plans. DEI and Seller shall consult with Buyer regarding the contents of each Draft Post-Closing Merchandise Plan and shall consider in good faith any recommendations made by Buyer (which recommendations must be made within five (5) Business Days following Buyer's receipt of any Draft Post-Closing Merchandise Plan) with respect to the contents thereof (including, without limitation, those recommendations set forth in subparagraph (d) below); provided, that DEI and Seller shall, in their respective sole discretion, make any final determinations regarding any changes to or modifications of the contents, or other any other component or element, of such Draft Post-Closing Merchandise Plan. Following consultation with Buyer regarding a Draft Post-Closing Merchandise Plan and after any changes or modifications to such Draft Post-Closing Merchandise Plan are made by DEI and Seller in their respective sole discretion, a Draft Post Closing Merchandise Plan shall become a **"Final Post-Closing Merchandise Plan."**

(ii) Material Changes to Final Post-Closing Merchandise Plans. In the event that DEI, Seller or the Company propose to make any material changes to a Final Post-Closing Merchandise Plan, or to materially deviate from any of the terms thereof, in each case, in the ordinary course of business, DEI and Seller shall consult with Buyer regarding any such changes to, or deviations from, a Final Post-Closing Merchandise Plan and shall consider in good faith any recommendations made by Buyer with respect to such proposed changes or deviations; provided, that DEI and Seller shall, in their respective sole discretion, make any final determinations regarding any such changes to, or deviations from, a Final Post-Closing Merchandise Plan. If DEI, Seller or the Company propose to make any material changes to a Final Post-Closing Merchandise Plan, or to cause or permit the Company to materially deviate from the terms thereof, other than any such changes or deviations that are in the ordinary course of business (as to which the preceding sentence shall apply), DEI and Seller shall, in each case, obtain the prior approval of Buyer thereto (which approval shall not be unreasonably withheld, conditioned or delayed and which approval shall be granted or denied within two (2) Business Days after request thereof by DEI and Seller).

(c) Final Post-Closing Merchandise Plans and Changes to Final Post-Closing Merchandise Plans After Special Election by Buyer. Buyer may elect to have the provisions of this subparagraph (c) apply in lieu of the provisions of subparagraph (b). If Buyer desires to elect the provisions of this subparagraph (c), Buyer shall give written notice of such election to DEI and Seller, and the provisions of this subparagraph (c) shall become effective on the fifth (5th) Business Day following receipt of such notice by DEI and Seller (provided, that, such election shall be invalid during any period in which any filing or matter under the Hart-Scott-Rodino Act is pending).

(i) Final Post-Closing Merchandise Plans. Buyer shall have the right to approve each Draft Post-Closing Merchandise Plan, which approval shall not be unreasonably withheld, conditioned or delayed and, in any event, shall be approved or disapproved within five (5) Business Days of submission; provided, that, in the event that Buyer designates one (1) or more

manufacturers to be used in connection with any such Draft Post-Closing Merchandise Plan that was not originally included in such Draft Post-Closing Merchandise Plan (each, a **"Buyer Designated Manufacturer"**), then (x) the Company shall not be required to use such Buyer Designated Manufacturer (A) if such Buyer Designated Manufacturer was on the list of disapproved manufacturers maintained by DEI and its Affiliates in the ordinary course of business prior to Buyer's designation of such manufacturer as a Buyer Designated Manufacturer or (B) if doing so would materially impair the Company's ability to implement the Draft Post-Closing Merchandise Plan or its ability to operate the Business, including, without limitation, as a result of such Buyer Designated Manufacturer's refusal to enter into the Company's standard vendor's memorandum of understanding or manufacturer's agreement or to comply with the Company's standard code of conduct for manufacturers or such Buyer Designated Manufacturer's inability to meet the Company's quality standards, and (y) if the Company uses such Buyer Designated Manufacturer, Buyer shall have the indemnification and reimbursement obligations set forth under Section 6.2.3 (c)(iii)(B). Upon approval by Buyer thereof, a Draft Post-Closing Merchandise Plan shall become a **"Final Post-Closing Merchandise Plan."**

(ii) Changes to Final Post-Closing Merchandise Plans. In the event that DEI, Seller or the Company propose to make any material changes to a Final Post-Closing Merchandise Plan, or to materially deviate from any of the terms thereof, DEI and Seller shall, in each case, obtain the prior approval of Buyer thereto (which approval shall not be unreasonably withheld, conditioned or delayed and which approval shall be granted or denied within two (2) Business Days after request thereof by DEI and Seller); provided, that, for purposes of this provision, the following changes to, or deviations from, a Final Post-Closing Merchandise Plan shall be considered immaterial and shall not require approval by Buyer pursuant to this subparagraph (c)(ii): (A) any changes to the budget under such Final Post-Closing Merchandise Plan of up to three percent (3%) more or three percent (3%) less than the total dollar amount provided therein (provided, that on the sixtieth (60th) day following the date hereof, the foregoing percentages shall automatically be increased to five percent (5%)) and (B) any changes in the types or categories of SKUs under such Post-Closing Merchandise Plan affecting up to three percent (3%) of the total SKUs reflected in such Post-Closing Merchandise Plan (provided, that on the sixtieth (60th) day following the date hereof, the foregoing percentage shall automatically be increased to five percent (5%)).

(iii) Indemnification; Reimbursement. Except for, and only to the extent of, any Loss resulting directly from the breach of any obligations of DEI, Seller and/or their Affiliates owed to any Buyer Designated Manufacturer, Buyer shall defend, indemnify, pay, reimburse and hold DEI, Seller and each of their Affiliates and the officers, directors, agents, representatives, employees, successors and assigns of each, forever harmless from and against any and all Loss (which, in the case of the following subparagraph (B), shall be deemed to include lost profits, notwithstanding any other provision of this Agreement to the contrary) imposed on or incurred or suffered by such Person arising directly or indirectly from, out of or based on (A) any Action asserted against DEI, Seller or their Affiliates relating to, arising out of, or resulting from, Buyer's election to make effective the provisions of this subparagraph (c) of this Section 6.2.3 or Buyer's exercise of its approval rights over the matters set forth in this subparagraph (c) of this Section 6.2.3, and (B) if the Closing does not occur and the transactions contemplated by this Agreement are not consummated, the Company's use of any Buyer Designated Manufacturer in connection with any Final Post-Closing Merchandise Plan, including, without limitation, any such Loss relating to, arising out of or resulting from (1) any failure of such Buyer Designated Manufacturer to deliver merchandise manufactured pursuant to such Final Post-Closing Merchandise Plan in accordance with the terms of any purchase order issued by the Company or its Affiliates, (2) any failure of products manufactured by such Buyer Designated Manufacturer pursuant to such Final Post-Closing Merchandise Plan to comply with the specifications therefor provided by the Company or its Affiliates to such Buyer Designated Manufacturer, (3) any and all product liability arising from any merchandise manufactured by such Buyer Designated Manufacturer pursuant to such Final Post-Closing Merchandise Plan, including, without limitation, any alleged deficiency or inadequacy in any instructions, warnings, labels or other materials included with any such merchandise, the fitness of any such merchandise for its intended use by consumers, any defect in design, material or workmanship of such merchandise, any misbranding, adulteration or unsafe feature of such merchandise, any failure of such merchandise to comply with any applicable Laws, any breach of the Company's standard vendor's memorandum of understanding or manufacturer's agreement or code of conduct for manufacturers, and any misuse of any name, brand, trademark, trade name, trade dress, logo, symbol, character, patent, copyrighted work, trade secret or other proprietary designation or intellectual property of the Company or its Affiliates by such Buyer Designated Manufacturer in connection with such merchandise, and (4) any injury to person or property or illness or death allegedly resulting from the foregoing subparagraph (3); provided, that, Buyer shall be subrogated to the rights of DEI, Seller and their Affiliates with respect to any Loss indemnified, paid or reimbursed by Buyer pursuant to this subparagraph (B) of this Section 6.2.3(c)(iii). The obligations of Buyer under this Section 6.2.3(c)(iii) shall survive the expiration or termination of this Agreement indefinitely.

(d) Recommendations as to Contents of Draft Post-Closing Merchandise Plans. In connection with any recommendations, approvals or disapprovals of Buyer regarding the contents of any Draft Post-Closing Merchandise Plan pursuant to subparagraph (b) or (c) of this Section 6.2.3, Buyer shall be entitled to make recommendations regarding (i) the types and quantities of SKUs to be ordered pursuant to such Draft Post-Closing Merchandise Plan and new products or new SKUs, regardless of whether any such product or SKU is contained in the Draft Post-Closing Merchandise Plan, (ii) prospective manufacturers of products contained in the Draft Post-Closing Merchandise Plan or new products recommended by Buyer, provided that Buyer acknowledges and agrees that each manufacturer of products for the Company must be a manufacturer that has entered into the Company's standard vendor's memorandum of understanding and standard manufacturer's agreement, including a standard manufacturer's code of conduct, in a form satisfactory to DEI in its sole discretion, none of which may consist of a manufacturer with an existing, exclusive manufacturing relationship with any of Buyer or its Affiliates or DEI, Seller or any of their respective Affiliates, and (iii) the cost to be incurred by the Company that Buyer believes to be reasonable in connection with the manufacture of any particular products by any prospective manufacturer. In addition, upon Buyer's reasonable request, DEI and Seller shall provide product designs, samples and specifications to Buyer with respect to a limited selection of SKUs or product categories as determined by DEI in its sole discretion, and Buyer shall be permitted to provide such product designs, samples and specifications

to any manufacturer approved in accordance with this Section 6.2.3(d) in connection with obtaining a price estimate for the manufacture of the applicable products.

(e) Retail Pricing Information. Notwithstanding anything to the contrary contained in this Agreement, the parties hereby agree and acknowledge that (i) no Draft Post-Closing Merchandise Plan or Final Post-Closing Merchandise Plan shall contain any information relating to retail pricing for Softlines, (ii) none of DEI, Seller or the Company shall have any obligation to provide Buyer with any information relating to retail pricing for Softlines, (iii) Buyer shall not, in connection with any recommendations, approvals or disapprovals of Buyer regarding the contents of any Draft Post-Closing Merchandise Plan or Final Post-Closing Merchandise Plan pursuant to subparagraph (b) or (c) of this Section 6.2.3, be entitled to make any recommendations relating to retail pricing for Softlines, and (iv) Buyer shall not be entitled to disapprove a Draft Post-Closing Merchandise Plan, or any changes to or deviations from a Final Post-Closing Merchandise Plan, in each case, pursuant to subparagraph (b) or (c) of this Section 6.2.3, based on any issue relating to retail pricing information for Softlines (or the lack thereof).

6.3 Conduct of Business. Unless otherwise consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), except as otherwise contemplated by this Agreement (including, without limitation, Sections 2.1, 6.7, 6.9 and 6.10) and except as may be required by applicable Law and except for any of the following actions that do not affect or relate to the Business (which actions shall not be prohibited by this Section 6.3), DEI and Seller will not permit the Company to:

6.3.1 (i) prepay any expense, except any such prepayments (A) made in the ordinary course of business or (B) not greater than $250,000 in any specific case or $500,000 in the aggregate made outside of the ordinary course of business or (ii) conduct the Business except in the ordinary course; or

6.3.2 agree to incur any obligation or liability of the Business outside of the ordinary course of business that individually calls for payment by the Company of more than $250,000 in any specific case or $750,000 in the aggregate, other than under any Material Contracts, Employment Contracts, Leases or Retained Asset Agreements; or

6.3.3 enter into any new lease or sublease or take assignment of any lease or sublease that would become an Acquired Lease, other than as contemplated by Section 6.7 or unless it expires prior to the Closing Date or it is on a month-to-month basis that is terminable by giving notice only; or

6.3.4 renew, extend, amend or modify any Acquired Lease other than in the ordinary course of business, consistent with past business practices, or as contemplated by Section 6.7, except that (i) any Month-to-Month Acquired Leases may continue on a month-to-month basis and (ii) any Acquired Lease may be extended up to, but not beyond, January 31, 2005 without the consent of Buyer; or

6.3.5 Transfer any of the Acquired Leases; or

6.3.6 Transfer any non-Lease assets of the Business, except for (i) distributions or other Transfers of the Retained Assets to DEI, Seller or their Affiliates, (ii) distributions or dividends of cash and/or cash equivalents to DEI, Seller or their Affiliates, (iii) Transfers of cash and/or cash equivalents to DEI, Seller or their Affiliates to pay intercompany loans or other intercompany debt, (iv) Transfers of Disney Dollars or Disney Theme Park Passports to DEI, Seller or their Affiliates and (v) other distributions or Transfers of property (A) in the ordinary course of business or (B) not greater than $250,000 in any specific case or $1,000,000 in the aggregate outside the ordinary course of business; or

6.3.7 make any capital expenditure commitments (other than New Capital Expenditure Requirements) with respect to the Business of more than $650,000 individually or $2,000,000 in the aggregate; or

6.3.8 grant any increase in the salary or benefits of any Continuing Employees, other than (i) regularly scheduled salary or benefit increases in the ordinary course of business, (ii) increases in salary and benefits in the ordinary course of business in connection with promotions and/or increases of responsibilities or duties, (iii) payment or agreement to pay regularly scheduled bonuses in the ordinary course of business, and (iv) with respect to Employment Contracts as set forth in Section 6.3.9; or

6.3.9 except as otherwise provided in Section 6.3.8, renew, renegotiate amend or extend any Employment Contract with a Continuing Employee (other than any renewal, renegotiation, amendment or extension of the existing terms of any Employment Contract that does not provide for an increase of more than twenty-five percent (25%) in existing compensation) or enter into or assume or acquire any new employment contract that provides for annualized compensation to any single individual in excess of $125,000; or

6.3.10 except as otherwise provided in Section 6.3.9 (i) hire or otherwise appoint any persons holding titles of vice president (or a more senior position or title), district managers or general managers or (ii) except for cause or any legal requirement, terminate or otherwise dismiss any Key Employees (for purposes of clarification, this Section 6.3.10 shall not prohibit DEI or its Affiliates (other than the Company) from hiring any Key Employee who voluntarily applies for or otherwise voluntarily solicits employment with DEI or any such Affiliate of DEI); or

6.3.11 except as otherwise provided in Section 6.3.8, 6.3.9, 7.4.4 or 7.4.5, adopt or amend any bonus, profit-sharing, incentive, severance or other Employee Benefit Plan, Contract or commitment for the benefit of any Continuing Employees, except as otherwise required under applicable Law; or

6.3.12 discontinue the Retention Program with respect to any Continuing Employee; or

6.3.13 amend the articles of organization, operating agreement, articles of incorporation or bylaws of TDS USA or TDS Canada or make any change in the authorized, issued or outstanding membership interests, capital stock (or shares) or any other equity Security of TDS USA or TDS Canada; Transfer, or purchase, redeem, retire or otherwise acquire, any of the membership interests in or shares of, or any Security convertible into capital stock (or shares), membership interests or other equity Securities of, TDS USA or TDS Canada; or grant or issue any stock option or warrant relating to, right to acquire, or Security convertible into, shares of capital stock (or shares), membership interests or other equity Security of TDS USA or TDS Canada; or

6.3.14 acquire, directly or indirectly, substantially all of the assets of, or a controlling equity interest in, any Person, or enter into any commitment to do the same; or

6.3.15 incur any Indebtedness (other than Indebtedness (i) consisting of intercompany Indebtedness that will not be an obligation of the Company as of the Closing, (ii) incurred in the ordinary course of business consistent with past practice, such as trade payables and accruals, or (iii) incurred in connection with actions permitted to be taken under this Section 6.3); or

6.3.16 enter into or amend any Material Contract; or

6.3.17 agree to take (or cause to be taken) any actions prohibited by this Section 6.3.

In addition, from the date hereof to the Closing Date or the earlier expiration or termination of this Agreement, DEI shall not, nor shall it permit its Affiliates to, (i) open for the first time, within a five (5) mile radius of any Acquired Store, an Outlet Store focused principally on the sale of consumer products that bear, feature or incorporate Disney Branded Properties comparable to the merchandise offered in the Stores; (ii) enter into any Contract that, if existing prior to the date of this Agreement, would have constituted a License Encumbrance Agreement, an Existing Restricted Name Agreement or a Company License Agreement Restriction Agreement; or (iii) enter into a DTR License with a Specialty Retail Store without complying with the restrictions contained in Section 6.2.2 of the License and Conduct of Business Agreement, as if it were the first contract year thereunder and the Company were the "Licensee" thereunder, subject to the exclusions contained in Section 6.2.4 of the License and Conduct of Business Agreement, and DEI further acknowledges and agrees that any such DTR License entered into from the date hereof to the Closing Date shall be taken into account in determining the compliance of TDS Franchising and its Affiliates with the provisions of Section 6.2.2 of the License and Conduct of Business Agreement, as applicable.

6.4 Capitalization, Financing and Liquidity of Buyer and TCP.

6.4.1 Capitalization and Financing. No later than five (5) Business Days prior to the Closing Date, Buyer shall deliver to DEI and Seller a list setting forth (a) all Outstanding TCP Securities as of the Closing Date, (b) to Buyer's Knowledge, the names of the beneficial holders of five percent (5%) or more of such Outstanding TCP Securities and the amount of Outstanding TCP Securities held by each such beneficial holder, and (c) if applicable, Buyer's and TCP's anticipated sources of other funds to acquire the Membership Units and the Shares and pay all other amounts required to be paid by Buyer and/or TCP under this Agreement, the Related Agreements, the Acquisition Agreement Guarantee and the TCP Guaranty and Commitment, including the identity of each such source, the amount to be funded by each such source and a summary of the material terms and conditions on which Buyer or TCP will obtain such funds (such list, **"Buyer's Closing Capitalization Table"**). Buyer's Closing Capitalization Table shall, with respect to the information required under subparagraphs (a) and (b) of this Section 6.4.1, show changes to such information from the information set forth on Buyer Schedule 5.1.5(a) and, with respect to the information required under subparagraph (c) of this Section 6.4.1, show changes to such information from the information set forth on Buyer Schedule 5.4. As of the Closing Date, Buyer's Closing Capitalization Table as so delivered to DEI and Seller shall remain true, correct and accurate. As of the Closing Date, neither Buyer nor TCP shall accept or use, nor permit its Affiliates to accept or use, any funds contributed, provided or otherwise made available to Buyer, TCP or any of its Affiliates by any Disqualified Person, directly or indirectly, in connection with the acquisition of the Membership Units or the Shares or the payment of other amounts required to be paid by Buyer and/or TCP under this Agreement, the Related Agreements, the Acquisition Agreement Guarantee and the TCP Guaranty and Commitment. To the extent the information in Buyer's Closing Capitalization Table differs in any material respect from that set forth on Buyer Schedule 5.1.5(a) or Buyer Schedule 5.4, Buyer's Closing Capitalization Table shall be subject to the approval of DEI and Seller in their respective sole discretion.

6.4.2 Liquidity Plan. No later than five (5) Business Days prior to the Closing Date, Buyer shall deliver to DEI and Seller a list setting forth, as the following will exist as of the Closing Date, Buyer's good faith estimate of its and TCP's internal and external sources of liquidity for a period of two (2) years following the Closing Date, including a reasonably detailed description of the provider, type, material terms and amount of each such source of liquidity (**"Buyer's Liquidity Plan"**). Buyer's Liquidity Plan shall show changes to such information from the information set forth on Buyer Schedule 5.4. As of the Closing Date, Buyer's Liquidity Plan as so delivered to DEI and Seller shall remain true, correct and accurate. Neither Buyer nor TCP shall accept or use, nor permit its Affiliates to accept or use, any funds contributed, provided or otherwise made available to Buyer, TCP or any of its Affiliates by any Disqualified Person, directly or indirectly, in connection with Buyer's Liquidity Plan or otherwise in connection with the Business. To the extent the information in Buyer's Liquidity Plan differs in any material respect from that set forth on Buyer Schedule 5.4, Buyer's Liquidity Plan shall be subject to the approval of DEI and Seller in their respective sole discretion.

6.4.3 Buyer's Governing Documents. Buyer hereby agrees to make (or, as applicable, to cause its Affiliates to make) all amendments, modifications or other changes to Buyer's Governing Documents (regardless of whether such documents were provided to DEI and Seller prior to the date hereof pursuant to Section 5.1.6) necessary to cause all of Buyer's Governing Documents to comply in all respects with the provisions of the License and Conduct of Business Agreement. Not later than ten (10) Business Days prior to the Closing Date, Buyer shall deliver to DEI and Seller drafts of all of Buyer's Governing Documents, as revised (as applicable) to comply in all respects with the provisions of the License and Conduct of Business Agreement. DEI and

Seller shall have the right to review and comment on all provisions of Buyer's Governing Documents, which comments shall be considered by Buyer in good faith, and the final versions of all of Buyer's Governing Documents (regardless of whether such documents were provided to DEI and Seller prior to the date hereof pursuant to Section 5.1.6) shall be subject to the approval of DEI and Seller in their respective sole discretion. As of the Closing Date, Buyer's Governing Documents as approved by DEI and Seller in their respective sole discretion pursuant to this Section 6.4.3 shall remain true, correct and accurate.

6.5 Notification of Certain Matters. DEI and Seller shall give prompt notice to Buyer, and Buyer shall give prompt notice to DEI and Seller, of (i) the occurrence, or failure to occur, of any event that would be likely to cause any representation or warranty by such party contained in this Agreement to be untrue or inaccurate (a) in the case of DEI and Seller in a manner that would cause a Material Adverse Event (provided, that, any representation or warranty of DEI and Seller contained herein that is already qualified by "materiality" or "Material Adverse Event" shall be deemed to be not so qualified for purposes of this Section 6.5, so that there will be no duplication between such qualifier contained within such representation or warranty and the "Material Adverse Event" qualifier in this clause) or (b) in the case of Buyer, in any material respect (provided, that, any representation or warranty of Buyer contained herein that is already qualified by "materiality" shall be deemed not to be so qualified for purposes of this Section 6.5, so that there will be no duplication between such qualifier contained within such representation or warranty and the "in any material respect" qualifier contained in this clause) and (ii) any failure of such party to comply with or satisfy, in any material respect, any covenant or condition to be complied with or satisfied by it under this Agreement.

6.6 Permits and Consents.

6.6.1 Permits. DEI, Seller and Buyer each agree to cooperate and use their commercially reasonable efforts to obtain (and will promptly prepare all registrations, filings, applications, requests and notices relating to) all Permits that may be necessary to consummate the transactions contemplated by this Agreement.

6.6.2 Consents. To the extent that the Consent of a third Person with respect to any Material Contract or Employment Contract is required in connection with the transactions contemplated by this Agreement, DEI, Seller and Buyer shall use their commercially reasonable efforts (other than the expenditure of money or, unless otherwise agreed to by the parties hereto or otherwise permitted by this Agreement, any amendment or modification of any such Contract) to obtain such Consent prior to the Closing Date.

6.6.3 Effect of Failure to Obtain Permits or Consents. The failure by DEI, Seller or Buyer to obtain one (1) or more Permits or Consents of third Persons with respect to any Material Contracts or Employment Contracts in connection with the transactions contemplated hereby shall not constitute a breach of this Agreement by DEI, Seller or Buyer for any purpose (including, without limitation, for purposes of Sections 9.1.2, 9.1.3, 9.1.4 and 9.1.5), and, except as set forth in Section 8.1.2, no such failure by DEI, Seller or Buyer shall relieve any party of its obligation to effect the Closing as contemplated herein.

6.7 Lease Matters.

6.7.1 Landlord Consents.

(a) Cooperation to Obtain Consents. To the extent the Consent of a third Person with respect to any Lease is required in connection with the transactions contemplated by this Agreement (as indicated on the Acquired Stores Schedule), DEI and Seller shall, and shall cause their Affiliates to, and Buyer shall, use their commercially reasonable efforts to obtain such Consent prior to the Closing Date, with the scheduling, organizing and conducting of all negotiations in connection therewith to be determined by DEI and Buyer in good faith consultation and cooperation with one another, provided, that Buyer shall use its best efforts to ensure that no substantive communications or negotiations pertaining to any such Lease or Consent shall occur between Buyer or any of its Affiliates and any Landlord without either (A) the participation of a duly authorized representative of DEI or any of its Affiliates or (B) the express prior written consent of one (1) of the Seller Consent Officers (whether such written consent has been given prior to, or is given after, the date hereof), which consent (i) may relate either to a particular communication or to a process by which certain communications may occur, (ii) may be granted or withheld in the business judgment of the applicable Seller Consent Officer, and (iii) may be provided by any Seller Consent Officer via email or in any other written format. Without limiting the foregoing, Buyer's cooperation hereunder shall include promptly delivering to DEI all information regarding Buyer, TCP and their respective Affiliates, Subsidiaries, officers, directors and employees as may be reasonably requested by, and upon reasonable notice making its and TCP's officers, directors and employees available to, DEI, Seller, the Landlords and/or their respective lenders. If at any time prior to the Closing Date either party obtains Knowledge that any of the Acquired Stores has been or will be leased by the Landlord to an unrelated third party, the party obtaining such Knowledge shall promptly inform the other party thereof.

(b) Lease Amendments and New Leases. In the event that, in connection with obtaining any Consent that is required with respect to any Lease in connection with the transactions contemplated by this Agreement (as indicated on the Acquired Stores Schedule), it becomes necessary for TDS USA, TDS Canada and/or Buyer or its Affiliates to renew, extend, amend or modify any Acquired Lease or to enter into any new lease or sublease or take assignment of any lease or sublease for an Acquired Store (for purposes of this Section 6.7.1, each such new or assigned lease or sublease for an Acquired Store is referred to as a **"New Lease"**) or to agree to do any of the foregoing, each such New Lease or renewal, extension, amendment or modification of an Acquired Lease shall be subject to the consent of each of DEI and Buyer, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, (A) DEI acknowledges and agrees that, if any such New Lease or renewal, extension, amendment or modification of an Acquired Lease shall by its terms not take effect unless and until the Closing Date shall have occurred, Buyer and its Affiliates shall consult with DEI in connection with such New Lease or renewal, extension, amendment or modification of an Acquired Lease, but DEI's consent shall not be required with respect thereto and Buyer may

cause New TDS LLC to enter into such New Lease or renewal, extension, amendment or modification, to be effective contingent upon the consummation of the transactions contemplated hereby, (B) Buyer acknowledges that it does not possess the authority to enter into, or to cause New TDS LLC or any of Buyer's Affiliates to enter into, any New Lease or renewal, extension, amendment or modification of an Acquired Lease that would become effective prior to the Closing Date, and (C) Buyer acknowledges and agrees that it shall not in any event withhold its consent to any New Lease or any renewal, extension, amendment or modification of any Acquired Lease on the grounds that such New Lease or renewal, extension, amendment or modification would:

(i) (A) with respect to Core Stores only, establish (in the case of a New Lease) or extend, amend or modify (in the case of a renewal, extension, amendment or modification of an Acquired Lease) the term of such New Lease or Acquired Lease, so long as (x) with respect to a number of Core Stores not exceeding ten percent (10%) of the total number of Core Stores, such term does not extend for more than ten (10) years after the Closing Date (but with no minimum length of term requirement) and (y) with respect to the remainder of the Core Stores, such term extends for at least seven (7) years and for not more than ten (10) years after the Closing Date; and (B) with respect to Non-Core Stores, establish (in the case of a New Lease) or extend, amend or modify (in the case of a renewal, extension, amendment or modification of an Acquired Lease) the term of such New Lease or Acquired Lease, so long as (x) with respect to a number of Non-Core Stores not exceeding ten percent (10%) of the total number of Non-Core Stores, such term does not extend for more than five (5) years after the Closing Date (but with no minimum length of term requirement) and (y) with respect to the remainder of the Non-Core Stores, the term shall be subject to the consent of each of DEI and Buyer, such consent not to be unreasonably withheld, conditioned or delayed, as provided above in this Section 6.7.1(b);

(ii) impose or increase base rent and/or percentage rent (or any comparable rent payment under a different name) due under such New Lease or Acquired Lease after the Closing (the amount of such new base rent and/or percentage rent, the **"New Rent Requirements"** and the Acquired Stores leased pursuant to the New Leases and/or Acquired Leases under which New Rent Requirements are imposed or increased pursuant to this Section 6.7.1(b), the **"New Rent Acquired Stores"**), so long as the aggregate annual amount of base rent and percentage rent payable under all New Leases and Acquired Leases for the New Rent Acquired Stores (with any such percentage rent to be an amount calculated using the Lease Sales Amount for each such New Rent Acquired Store and the applicable percentage rent formula under such New Lease or Acquired Lease as if it had been in effect in Fiscal Year 2003) does not exceed an amount equal to one hundred thirty percent (130%) of (A) the sum of the Lease Base Rent Amounts for such New Rent Acquired Stores, plus (B) the sum of the Lease Percentage Rent Amounts for such New Rent Acquired Stores; provided, that, with respect to Non-Core Stores, the foregoing provisions of this subparagraph (ii) of this Section 6.7.1(b) shall only apply to a number of Non-Core Stores not exceeding ten percent (10%) of the total number of Non-Core Stores, and, with respect to the remainder of the Non-Core Stores, the New Rent Requirements shall be subject to the consent of each of DEI and Buyer, such consent not to be unreasonably withheld, conditioned or delayed, as provided above in this Section 6.7.1(b); and/or

(iii) impose or increase capital expenditure requirements under such New Lease or Acquired Lease after the Closing (the amount of such new capital expenditure requirements, the **"New Capital Expenditure Requirements"**), so long as (A) such New Lease or Acquired Lease has a term of at least seven (7) years, (B) any New Capital Expenditure Requirements associated with any required renovation, remodel or build-out of an Acquired Store do not exceed $650,000 for any single Acquired Store and (C) the Company shall have a period of not less than one (1) year after the Closing Date to complete any required renovation, remodel or build-out of such Acquired Store.

(c) Consent Fees. In the event that, in connection with obtaining any Consent that is required with respect to any Lease in connection with the transactions contemplated by this Agreement (as indicated on the Acquired Stores Schedule), any third party shall require, or condition its Consent upon, payment of a Consent Fee, DEI and Seller shall determine in their respective sole discretion whether to pay such Consent Fee and, if DEI and Seller determine to pay such Consent Fee, the payment thereof shall be the sole responsibility of DEI and/or Seller; provided, that, Buyer shall have the right, in its sole discretion, as provided in Section 6.7.2(a)(i), to pay any such Consent Fee within five (5) Business Days after DEI provides notice to Buyer that DEI and Seller have elected not to pay such Consent Fee.

(d) Release from U.K. Lease Guarantees. DEI and Seller shall use, and shall cause their Affiliates to use, commercially reasonable efforts to facilitate the release of TDS USA from the U.K. Lease Guarantees, provided, that, such efforts shall not include providing substitute guarantors, security deposits, stand-by letters of credit or other credit enhancement devices in connection therewith. If TDS USA is not released from any U.K. Lease Guarantees prior to the Closing, DEI and Seller shall indemnify and hold Buyer and its Affiliates harmless from and against any and all Loss arising directly or indirectly from, out of or based on the U.K. Lease Guarantees.

6.7.2 Changes to Acquired Stores Schedule and Disney Retained Stores Schedule.

(a) Deletions from Acquired Stores Schedule. In the event that (i) any third Person, with respect to any Acquired Lease for which the Consent of such Person is required hereunder (as indicated on the Acquired Stores Schedule), conditions its Consent upon terms that are not acceptable to DEI or Seller in its respective business judgment (unless either (1) such terms consist of the payment of a penalty, fee or other charge that, within five (5) Business Days after notice thereof from DEI to Buyer, Buyer elects, in its sole discretion, to cause TCP to pay on behalf of DEI or Seller or (2) such terms consist of changes to the applicable Lease that would not be obligations of DEI, Seller or their Affiliates following the Closing and, within five (5) Business Days after notice thereof from DEI to Buyer, Buyer has consented thereto in accordance with Section 6.7.1(b)), (ii) any Acquired Lease expires pursuant to its terms prior to the Closing Date and the Company is not able to continue its tenancy thereunder on a month-to-month basis upon terms that are acceptable to DEI or Seller in its respective business judgment, including, without limitation, the absence of any penalty, fee or other charge, including incremental, additional holdover rent (unless, within five (5) Business

Days after notice thereof from DEI to Buyer, Buyer elects, in its sole discretion, to cause TCP to pay any such penalty, fee or other charge, including incremental, additional holdover rent, on behalf of DEI or Seller), or (iii) DEI or Seller otherwise determines that any particular Acquired Lease should not be included among the assets of the Company in connection with the Membership Unit Acquisition and/or the Share Acquisition because, in DEI's or Seller's judgment in its respective sole discretion, it has become impractical for any other reason to obtain the Consent of the Landlord thereunder, then DEI and Seller shall have the right (x) in the case of subparagraph (i) or (iii) above, to amend the Acquired Stores Schedule to remove therefrom the Store leased under such particular Lease and, unless added to the Deferred Stores Schedule pursuant to Section 6.7.3(a), amend the Disney Retained Stores Schedule to add thereto the Store leased under such particular Lease and (y) in the case of subparagraph (ii) above, to amend the Acquired Stores Schedule to remove therefrom the Store leased under such particular Lease and to terminate operations at such Store. Stores that are removed from the Acquired Stores Schedule and added to the Disney Retained Stores Schedule pursuant to this Section 6.7.2(a) are referred to herein as **"Non-Transferable Stores,"** and Stores that are removed from the Acquired Stores Schedule as a result of the circumstances described in subparagraph (ii) above are referred to herein as **"Expired Lease Stores."** Nothing in this Section 6.7.2(a) shall limit the rights of DEI and Seller to add any Stores removed from the Acquired Stores Schedule as a result of the circumstances described in subparagraph (i) or (iii) above to the Deferred Stores Schedule pursuant to Section 6.7.3(a) rather than to the Disney Retained Stores Schedule pursuant to this Section 6.7.2(a), and any election as to the schedule to which any particular Acquired Store shall be added shall be made by DEI and Seller in their respective sole discretion.

(b) Effective Date of Amendments to Acquired Stores Schedule or Disney Retained Stores Schedule; Termination of Certain Leases.

(i) On the Monday of each week, beginning on the Monday following the first full week after the date hereof, DEI and Seller shall give written notice to Buyer of any amendments to be made to the Acquired Stores Schedule or the Disney Retained Stores Schedule pursuant to this Section 6.7.2 during the preceding week. Any such amendments to the Acquired Stores Schedule or the Disney Retained Stores Schedule shall automatically become effective on the third (3rd) Business Day following the giving of such written notice by DEI and Seller to Buyer (provided, that (i) if the Closing Date falls on a day that is before the third (3rd) Business Day following the giving of any such notice pursuant to this Section 6.7.2(b), then any such amendments to the Acquired Stores Schedule or the Disney Retained Stores Schedule shall automatically become effective on the date that is two (2) Business Days before the Closing Date and (ii) DEI and Seller shall be entitled to give Buyer a final written notice pursuant to this Section 6.7.2(b) on the date that is two (2) Business Days before the Closing Date, and any such amendments to the Acquired Stores Schedule or the Disney Retained Stores Schedule contained in such notice shall automatically become effective on such date). Notwithstanding anything herein to the contrary, the failure by DEI or Seller to give any written notice to Buyer pursuant to this Section 6.7.2(b) shall not constitute a breach of this Agreement by DEI or Seller for any purpose (including, without limitation, for purposes of Sections 9.1.3, 9.1.4 and 9.1.5).

(ii) DEI and Seller shall be entitled to terminate (and/or to cause TDS USA or TDS Canada, as applicable, to terminate) any Disney Retained Lease; provided, that, in the event that a Signing Date Acquired Store that is a Core Store is added to the Disney Retained Stores Schedule pursuant to this Section 6.7.2, DEI and Seller shall not terminate (or permit TDS USA or TDS Canada to terminate) the Lease relating to such Store or terminate operations at such Store until the tenth (10th) Business Day following the effective date of the amendment to the Disney Retained Stores Schedule pursuant to which such Store is added to the Disney Retained Stores Schedule (or, if earlier, on the date that is two (2) Business Days before the Closing Date) and, upon Buyer's request, DEI shall consult with Buyer during such time period regarding obtaining any required Consent under the Lease for such Core Store rather than terminating such Lease (provided, that, DEI shall have no obligation whatsoever to gree to any terms proposed by Buyer).

(iii) DEI and Seller shall not terminate (and shall not permit TDS USA or TDS Canada, as applicable, to terminate) any Lease that is not a Disney Retained Lease without the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed); provided, that, the foregoing shall not otherwise limit any other rights of DEI or Seller under this Agreement (including, without limitation, under this Section 6.7.2).

(c) Effect of Failure to Obtain Lease Consents. Provided that DEI and Seller shall have complied with their obligation to exercise commercially reasonable efforts to obtain the Consents required with respect to the Leases in connection with the transactions contemplated hereby (as indicated on the Acquired Stores Schedule) pursuant to Section 6.7.1(a), the failure by DEI or Seller to obtain one (1) or more Consents with respect to any Lease or Leases in connection with the transactions contemplated hereby shall not constitute a breach of this Agreement by DEI or Seller for any purpose (including, without limitation, for purposes of Sections 9.1.3, 9.1.4 and 9.1.5), and, except as set forth in Sections 8.2.2 and 8.3.2, no such failure by DEI or Seller shall relieve any party of its obligation to effect the Closing as contemplated herein.

6.7.3 Subsequent Closing for Deferred Leases.

(a) Deferred Leases. In the event that, upon satisfaction or waiver of all of the conditions set forth in Article VIII (including the conditions set forth in Sections 8.2.2 and 8.3.2 with respect to the minimum number of Consent Required Core Stores), any Consents of third Persons required to be obtained in connection with the transactions contemplated by this Agreement pursuant to the terms of any particular Acquired Leases (as indicated on the Acquired Stores Schedule) have not been obtained, the Closing shall occur in accordance with the provisions of Section 3.1, provided, that (a) the Acquired Stores Schedule shall be amended (but not earlier than two (2) Business Days before the Closing Date) to remove therefrom the Store(s) leased under such particular Lease(s) and such Store(s) shall be added to the Deferred Stores Schedule (unless previously transferred to the Disney Retained Stores Schedule pursuant to Section 6.7.2(a)), and (b) in addition to the Retained Assets, Seller shall cause TDS USA to distribute to Seller in connection with the LLC Distribution, and DEI shall cause TDS Canada to Transfer to Canadian Transferee

in connection with the Canadian Transfer, those Acquired Leases as to which Consents of third Persons are required to be, but as of the date that is two (2) Business Days before the Closing Date have not been, obtained (such Acquired Leases are referred to herein as **"Deferred Leases"**) and all properties, assets, rights, liabilities and obligations relating to the conduct and operation of the Business pertaining to the Deferred Stores.

(b) Subsequent Closing Period. In the event there are Deferred Leases upon the Closing, during the period commencing on the Closing Date and ending on the earlier to occur of (i) the date that is four (4) months after the Closing Date and (ii) the date on which all Consents required from third Persons with respect to the Deferred Leases, if any, shall have been obtained (such period, if applicable, the **"Subsequent Closing Period,"** provided, that, there shall be no Subsequent Closing Period if there are no Deferred Leases upon the Closing), DEI, Seller and Buyer shall continue to use their commercially reasonable efforts to obtain any Consents required from third Persons with respect to the Deferred Leases in connection with the transactions contemplated by this Agreement (as indicated on the Acquired Stores Schedule) as set forth in and in accordance with the terms of Section 6.7.1 (including Section 6.7.1(b)); provided, that if at any time during the Subsequent Closing Period DEI or Seller determines, in its respective sole discretion, that obtaining a Consent for any particular Deferred Lease has become impractical, then, upon five (5) Business Days written notice from DEI to Buyer (during which period DEI shall, upon Buyer's request, consult with Buyer regarding such Deferred Lease), DEI and Seller may cease pursuing such Consent. When the requisite Consents with respect to any Deferred Lease have been obtained, the Deferred Stores Schedule shall be amended to remove therefrom the Store leased under such particular Deferred Lease and such Store shall be added to the Approved Deferred Stores Schedule. Within two (2) Business Days after the end of each calendar month during the Subsequent Closing Period and within five (5) Business Days after the last day of the Subsequent Closing Period, DEI and Seller shall give written notice to Buyer of any Deferred Leases with respect to which the requisite Consents have been obtained and of any amendments to the Approved Deferred Stores Schedule pursuant to this Section 6.7.3 (all such Deferred Leases as to which such Consents are obtained, collectively, the **"Approved Deferred Leases"**).

(c) Approved Deferred Stores Schedule and Subsequent Closing Balance Sheet. No later than fifteen (15) Business Days after the last day of the Subsequent Closing Period, DEI and Seller shall deliver to Buyer (i) the Approved Deferred Stores Schedule, (ii) DEI's and Seller's good faith estimated unaudited balance sheet reflecting the assets and liabilities of Seller and Canadian Transferee relating solely to the Approved Deferred Stores, including, without limitation, the Approved Deferred Leases and Store-Related Assets and Liabilities, as of the Subsequent Closing Date (the **"Subsequent Closing Balance Sheet"**), and (iii) a letter certifying as to DEI's and Seller's good faith calculation of the Estimated Subsequent Closing Working Capital Adjustment Amount. The Subsequent Closing Balance Sheet shall be prepared in substantially the same manner and form as the Pro Forma Balance Sheet (including the application of Modified GAAP), except for adjustments made to limit the Subsequent Closing Balance Sheet to the Approved Deferred Stores in accordance with the Store Adjustment Methodology.

(d) Subsequent Closing; Deliveries. The closing with respect to all Approved Deferred Leases (the **"Subsequent Closing"**) will take place as soon as reasonably practicable, and in any event within five (5) Business Days, following the delivery by DEI and Seller to Buyer of the Approved Deferred Stores Schedule, the Subsequent Closing Balance Sheet and any other items required by Section 6.7.3(c). At the Subsequent Closing:

(i) Seller shall deliver, and DEI shall cause Canadian Transferee to deliver, to Buyer the Deferred Lease Assignment and Assumption Agreement (which shall include a bring-down to the Subsequent Closing Date of the representations and warranties contained in subparagraphs (a), (b), (c), (d) and (f) of Section 4.6.1 with respect to the Approved Deferred Stores only), Transferring the Approved Deferred Leases and Store-Related Assets and Liabilities to TDS USA and/or TDS Canada, as applicable, duly executed by Seller and Canadian Transferee;

(ii) Buyer shall deliver to Seller and Canadian Transferee the Deferred Lease Assignment and Assumption Agreement, duly executed by TDS USA and/or TDS Canada, as applicable; and

(iii) any Deferred Stores that are not Approved Deferred Stores as of the Subsequent Closing Date shall be deemed to be Disney Retained Stores.

6.7.4 Survival of Section 6.7. The provisions of this Section 6.7 shall survive the Closing until the Subsequent Closing Date or, if no Subsequent Closing occurs, until expiration of the Subsequent Closing Period.

6.8 Regulatory Filings and Deliveries.

6.8.1 Hart-Scott-Rodino Act. DEI, Seller and Buyer will, or, as applicable, will cause their respective ultimate parent entities to, promptly make any and all filings required to be made under the Hart-Scott-Rodino Act in connection with the transactions contemplated hereby, to the extent not already made. DEI, Seller and Buyer shall furnish to each other such necessary information and reasonable assistance as the other may request in connection with its preparation of necessary filings or submissions under the provisions of the Hart-Scott-Rodino Act. The parties hereby acknowledge that, as of the date hereof, each has received notice that early termination of the waiting period under the Hart-Scott-Rodino Act has been granted with respect to the transactions contemplated by this Agreement.

6.8.2 Investment Canada Act. Buyer will, or, as applicable, will cause its Affiliates to, promptly make any and all filings required to be made under the Investment Canada Act in connection with the transactions contemplated hereby. Buyer will, or, as applicable, will cause its Affiliates to, cooperate and negotiate reasonably and in good faith with Heritage Canada and comply with all reasonable requests of Heritage Canada. Upon Buyer's request, Seller, DEI and TDS Canada will provide reasonable cooperation to Buyer in connection with filings under the Investment Canada Act and in connection with any reasonable requests of

Heritage Canada, provided that Buyer shall reimburse DEI, Seller and TDS Canada, as applicable, for any out-of-pocket expenses (excluding fees and expenses of attorneys and any filing fees under the Investment Canada Act, which are addressed in Section 11.12) reasonably incurred by DEI, Seller or TDS Canada, as applicable, in connection with providing such cooperation to Buyer.

6.8.3 Competition Act. DEI, Seller and Buyer agree and acknowledge that the transactions contemplated hereby are not "pre-notifiable" under the Competition Act.

6.8.4 Franchise Information. At least twenty (20) Business Days prior to the Closing Date, DEI and/or Seller shall deliver to Buyer (a) the Uniform Franchise Offering Circular pertaining to TDS USA and (b) the information pertaining to TDS Canada that is necessary to comply with Canadian franchise Law applicable to TDS Canada and, at least five (5) Business Days prior to the Closing Date, Buyer shall deliver to DEI and Seller a written letter, in form and substance reasonably satisfactory to DEI and Seller, confirming that Buyer and its Affiliates have had at least ten (10) Business Days to review and ask questions regarding such Uniform Franchise Offering Circular and such information pertaining to TDS Canada.

6.9 Retained Asset Agreements.

6.9.1 General. TDS USA and/or TDS Canada are currently parties to certain Contracts that constitute a portion of, or relate directly and primarily to, the Retained Assets (collectively, the **"Retained Asset Agreements"**), including, without limitation, the following: (i) the Agreement among TDS USA, Retail Networks Co., Ltd. (**"RNC"**) and Oriental Land Co., Ltd. (**"OLC"**) with respect to the operation of The Disney Store Japan (**"TDS Japan"**) dated April 1, 2002 (as amended, the **"TDSJ License Agreement"**); (ii) the Information Technology Services Agreement among TDS USA, RNC and OLC dated April 1, 2002 (as amended, the **"TDSJ IT Services Agreement"**); (iii) the Amended and Restated Credit Card Program Agreement between TDS USA and Monogram Credit Card Bank of Georgia (**"Monogram"**) dated as of February 11, 1994 (as amended, the **"Monogram Agreement"**); (iv) the Buying Agency Agreement among TDS USA, Disney Worldwide Services, Inc. (**"DWS"**), Disneyland Merchandise Importing (**"DLMI"**), Walt Disney Parks and Resorts, LLC (**"WDPR"**) and Li & Fung (Trading) Limited (**"Li & Fung"**) entered into as of October 1, 2001 (as amended, the **"Li & Fung Agreement"**); (v) the Buying Agency Agreement among TDS USA, DWS and NAP, Inc. (**"NAP"**) dated April 8, 2003 (as amended, the **"NAP Agreement"**); (vi) the Buying Agency Agreement among TDS USA, DWS, DLMI, WDPR and Ocean Sky International Enterprise Limited (**"Ocean Sky"**) dated as of August 27, 2002 (as amended, the **"Ocean Sky Agreement"**); (vii) the Standard Chartered Facility; and (viii) the other Contracts set forth on TDS Schedule 1.1(d). For purposes of clarification, the Retained Asset Agreements consisting of Contracts pertaining to Disney Information Technology or Non-IT Intellectual Property are separately addressed in Sections 4.7 and 7.8.

6.9.2 Pre-Closing Obligations Regarding Certain Retained Asset Agreements. DEI and Seller agree that they shall use their commercially reasonable efforts (other than the expenditure of money or, except as DEI or Seller may determine in its respective sole discretion, the amendment or modification of any of the following Retained Asset Agreements) to do the following prior to the Closing:

(a) with respect to the TDSJ License Agreement and the TDSJ IT Services Agreement, assign TDS USA's obligations thereunder to DEI or one of its Affiliates (other than the Company) and obtain the Consent of RNC and OLC to such assignment;

(b) with respect to the Monogram Agreement, (i) assign TDS USA's obligations thereunder to DEI or one of its Affiliates (other than the Company) and obtain the Consent of Monogram to such assignment, and (ii) cause TDS USA to enter into a Monogram Participation Agreement to be effective as of the Closing Date (and DEI and Seller shall provide a copy thereof to Buyer);

(c) with respect to the Li & Fung Agreement, amend such agreement so that TDS USA is no longer a party thereto and, to the extent reasonably requested by Buyer, arrange for an introduction of Buyer to Li & Fung in order to enable Buyer, TDS USA and/or TDS Canada to enter into a new agreement with Li & Fung pertaining to the Business; and

(d) with respect to the NAP Agreement, the Ocean Sky Agreement and the Standard Chartered Facility, amend each such agreement so that TDS USA is no longer a party thereto.

6.9.3 Other Retained Asset Agreements. DEI and Seller agree that they shall use their commercially reasonable efforts (other than the expenditure of money or, except as DEI or Seller may determine in its respective sole discretion, the amendment or modification of any of the Retained Asset Agreements) prior to the Closing to obtain any Consent or take such other action as may be necessary to distribute to Seller in connection with the LLC Distribution or Transfer to Canadian Transferee in connection with the Canadian Transfer any other Retained Asset Agreements not specifically referenced in Section 6.9.2 or to assign any such other Retained Asset Agreements to DEI or any of its Affiliates (other than the Company).

6.9.4 Effect of Failure to Assign or Amend Retained Asset Agreements. The parties agree that the failure by DEI or Seller to assign, distribute, amend or obtain any Consent required under any Retained Asset Agreement in connection with the transactions contemplated hereby shall not constitute a breach of this Agreement by DEI or Seller for any purpose (including, without limitation, for purposes of Sections 9.1.3, 9.1.4 and 9.1.5), and no such failure by DEI or Seller shall relieve Buyer of its obligation to effect the Closing as contemplated herein. The parties further agree that, if any Retained Asset Agreements are not distributed to Seller in connection with the LLC Distribution, Transferred to Canadian Transferee in connection with the Canadian Transfer or assigned to DEI or any of its Affiliates (other than the Company) as of the Closing Date, the parties shall be required to

perform their respective obligations with respect to such Retained Asset Agreements as set forth under Section 7.5 (provided that, in such event, DEI or Seller shall provide Buyer with a copy of any such Retained Asset Agreement).

6.10 Participation Agreements.

6.10.1 General. DEI and/or its Affiliates (other than the Company) are currently parties to certain Contracts in which TDS USA and/or TDS Canada participate or under which TDS USA and/or TDS Canada are third party beneficiaries or otherwise derive benefit (collectively, the "**Participation Agreements**"), including, without limitation, the American Express Card Service Agreement dated September 12, 2003 between American Express Travel Related Services Company, Inc. ("**Amex**") and DWS (as amended, the "**Amex Agreement**"), the Canada Mastercard Agreement, the ValueLink Agreement and the Disney Supply Chain Arrangements.

6.10.2 Negotiations Regarding the Amex Agreement, the Canada Mastercard Agreement and Other Credit and Charge Card Agreements. DEI and Seller agree that, prior to the Closing, Buyer shall be entitled, in its sole discretion, to negotiate with (i) Amex with respect to an agreement pursuant to which the Company would be entitled to accept Amex credit and charge cards following the Closing, (ii) Bank of Montreal (or another servicing bank) with respect to an agreement pursuant to which the Company would be entitled to accept Mastercard credit and charge cards in Canada following the Closing and/or (iii) subject to Section 6.11.9 and DEI and Seller's determination of the status of SunTrust and the SunTrust Agreement thereunder, one (1) or more additional servicing banks with respect to one (1) or more agreements pursuant to which the Company would be entitled to accept Visa, Mastercard, Discover or other major credit or charge cards in the United States or Canada following the Closing (as and to the extent necessary to ensure that the Company will be in a position to accept such credit and charge cards), provided that, in the case of each of subparagraphs (i), (ii) and (iii) of this Section 6.10.2: (A) such agreement shall become effective only after the Closing, (B) Buyer shall provide DEI with each draft of such agreement that is distributed between the parties thereto (redlined to reflect changes therein) and shall consider in good faith any comments made by DEI with respect to such drafts, and (C) Buyer shall not, and shall not permit the Company or its Affiliates to, enter into such agreement unless the final version thereof has been approved in writing by DEI in its business judgment, such approval or disapproval to be communicated to Buyer within five (5) Business Days after such final version is provided to DEI (provided, that such approval shall be in DEI's sole discretion with respect to any terms or conditions that relate to any matters that may, as determined by DEI in its sole discretion, be expected to violate, constitute a default under or breach in any material respect, or, even if not constituting an actual violation, default or breach, may be expected to materially conflict with or impair the rights, benefits or value accruing to DEI or its Affiliates under or in connection with, this Agreement, the License and Conduct of Business Agreement, any other Related Agreement, the TCP Guaranty and Commitment, the Intellectual Property of DEI or any of its Affiliates, and/or any material Contract to which any of DEI or its Affiliates is a party or under which any of DEI's or its Affiliates' properties or assets are bound, including, without limitation, Contracts and strategic alliances between DEI or its Affiliates and Visa USA, Bank One, N.A. and/or their respective Affiliates).

6.10.3 ValueLink Agreement. DEI and Seller agree that they shall use their commercially reasonable efforts (other than the expenditure of money or, except as DEI or Seller may determine in its respective sole discretion, the amendment or modification of the ValueLink Agreement) to cause TDS USA (and, as applicable as determined by DEI in its sole discretion, TDS Canada) to enter into a ValueLink Participation Agreement to be effective as of the Closing Date (and DEI and Seller shall provide a copy thereof to Buyer).

6.10.4 No Rights Under Participation Agreements. Buyer acknowledges and agrees that, following the Closing, except as set forth in Section 6.11.3 with respect to the Disney Supply Chain Arrangements and subject to Section 6.10.3, the Company shall not be entitled to any rights, interests, benefits or other participation under any of the Participation Agreements, all of which shall be solely for the benefit of, and solely the obligations of, DEI and its Affiliates (other than the Company), and following the date hereof, DEI and/or its Affiliates shall be entitled, in their respective sole discretion, except as otherwise provided in Section 6.10.2, to negotiate amendments, restatements or other modifications to any of the Participation Agreements in order to terminate TDS USA's and/or TDS Canada's rights, interests, benefits and participation thereunder, and Buyer hereby consents to such amendments, restatements or other modifications to such Participation Agreements.

6.10.5 Effect of Failure to Assign or Amend Participation Agreements. The parties agree that the failure by DEI, Seller or their Affiliates to amend, restate, modify, enter into, assign or obtain any Consent required under any Participation Agreement in connection with the transactions contemplated hereby shall not constitute a breach of this Agreement by DEI or Seller for any purpose (including, without limitation, for purposes of Sections 9.1.3, 9.1.4 and 9.1.5), and no such failure by DEI or Seller shall relieve Buyer of its obligation to effect the Closing as contemplated herein.

6.11 Certain Transactions and Agreements.

6.11.1 Company Bank Accounts; Powers of Attorney.

(a) (i) Prior to the Closing, DEI and/or Seller shall use their commercially reasonable efforts to remove effective as of the Closing Date, as an authorized signatory with respect to TDS Canada's bank account # **, held at the Bank of Montreal (the "**Bank of Montreal Account**"), any Person that is so authorized and (ii) to the extent not done prior to the Closing despite the exercise of their commercially reasonable efforts, following the Closing, as soon as reasonably practicable following Buyer's or the Company's request, DEI and/or Seller shall remove, effective immediately, as an authorized signatory with respect to the Bank of Montreal Account, any Person that is so authorized and that is not a Continuing Employee. Buyer shall cooperate with DEI and Seller as reasonably requested by DEI or Seller to arrange for the designation of substitute authorized signatories with respect to the

Bank of Montreal Account. Buyer acknowledges and agrees that it shall have no right to or interest in the Bank of Montreal Account or any amounts held therein prior to the Closing Date.

---

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

(b) Prior to the Closing, DEI and/or Seller shall use their commercially reasonable efforts to change, effective as of the Closing Date, the owner or holder of each bank account owned or held in the name of TDS USA and/or TDS Canada (other than the Bank of Montreal Account) to DEI or one of its Affiliates (other than TDS USA or TDS Canada). Such bank accounts shall include, without limitation, all savings, checking, deposit, credit and similar accounts and any safe deposit box owned by or held in the name of TDS USA or TDS Canada (other than the Bank of Montreal Account). Following the Closing, as soon as reasonably practicable following Buyer's or the Company's request, DEI and/or Seller shall change such ownership of any such bank account to the extent not done prior to the Closing despite the exercise of their commercially reasonable efforts. Buyer shall cooperate with DEI and Seller as reasonably requested by DEI or Seller to arrange for such change in ownership to DEI or its designated Affiliate (other than TDS USA or TDS Canada) following the Closing. Buyer acknowledges and agrees that it shall have no right to or interest in any of such accounts or any amounts held therein.

(c) Prior to the Closing, DEI and/or Seller shall use their commercially reasonable efforts to terminate effective as of the Closing Date, and following the Closing, as soon as reasonably practicable following Buyer's or the Company's request, DEI and/or Seller shall terminate (to the extent not done prior to the Closing despite the exercise of their commercially reasonable efforts) effective immediately, any power of attorney given by the Company in favor of DEI, Seller and/or their employees, officers, directors or Affiliates, other than any such power of attorney that is contained in this Agreement, the Related Agreements, the Pre-Closing Transaction Contracts (other than any Pre-Closing Transaction Contract that was not provided to Buyer prior to the Closing in violation of Section 2.1) or any other Contracts entered into in connection therewith.

6.11.2 Letters of Credit Relating to Inventory Orders. The parties acknowledge and agree that (a) DEI or its Affiliates (other than the Company) shall be responsible for any obligations incurred under letters of credit issued pursuant to a Trade LC Facility in connection with, or as a payment mechanism for, inventory purchase orders issued by the Company on or prior to the Closing Date (**"Pre-Closing Inventory Orders"**), and (b) the Company, as a Subsidiary of Buyer, (i) shall be solely responsible for issuing or causing the issuance of, and for any and all obligations under, letters of credit issued in connection with, or as a payment mechanism for, Post-Closing Inventory Orders and Non-LC Purchase Orders, and DEI and its Affiliates shall not have any responsibility or liability therefor, (ii) shall not under any circumstances issue, or cause to be issued, under any Trade LC Facility (and the Company shall have no right to cause to be issued under any Trade LC Facility), any letters of credit for Post-Closing Inventory Orders or Non-LC Purchase Orders and (iii) if the Closing occurs, shall indemnify and hold DEI and its Affiliates (other than the Company) harmless from any Loss incurred in connection with any Post-Closing Inventory Orders and/or any Non-LC Purchase Orders and/or any letters of credit issued in connection therewith.

6.11.3 Disney Umbrella Freight Services. To the extent requested by the Company after the Closing, DEI or its Affiliates (other than the Company) shall continue to provide to the Company the Disney Umbrella Freight Services until the forty-fifth ($45^{th}$) day following the Closing Date or, if earlier, the date following the Closing selected by Buyer (the **"Freight Services Termination Date"**). After the Freight Services Termination Date, DEI and its Affiliates shall cease to provide any such Disney Umbrella Freight Services to the Company, and Buyer or the Company shall be solely responsible for procuring any required, comparable replacement services for the Company. Any unpaid invoices for Disney Umbrella Freight Services existing as of the Closing and any invoices for Disney Umbrella Freight Services received by the Company after the Closing shall by paid by DEI within thirty (30) days following submission thereof by the Company to DEI (provided, that, the Company shall promptly submit such invoices to DEI and shall not increase DEI's liability thereunder through any delay or negligence on the part of the Company).

6.11.4 **.

---

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

6.11.5 Certain Pre-Closing Expenses. No later than ten (10) Business Days following DEI's submission of an invoice or other comparable request for reimbursement to Buyer, whether or not the Closing shall occur, Buyer shall pay directly to DEI (and not to the Company) an amount equal to all costs and expenses incurred by the Company or its Affiliates for those activities or items set forth on TDS Schedule 6.11.5, or such portion thereof as is set forth on such schedule. Any such costs and expenses incurred by the Company or its Affiliates following the Closing Date in respect of such activities shall be borne solely by the Company and/or TCP, as the case may be, and none of DEI or its Affiliates shall have any liability or responsibility therefor. This covenant shall survive any expiration or termination of this Agreement indefinitely. If, following the Closing, DEI or any of its Affiliates becomes subject to an audit or other governmental investigation or proceeding relating to or in connection with any Form I-9 that has been provided to Buyer in connection with the payment of expenses for activities or items set forth on TDS Schedule 6.11.5, then, within five (5) Business Days after DEI's request, Buyer or its Affiliates (as applicable) shall, at their sole cost and expense, provide to DEI or its designated Affiliate an original of any and all such Forms I-9.

6.11.6 Company Credit Facility; Supporting LCs.

(a) Buyer shall at its sole cost and expense, establish on or prior to the Closing (and have in place as of the Closing) the Company Credit Facility in accordance with the terms and provisions of this Section 6.11.6, which credit facility, as of the Closing (i) shall provide for the issuance of letters of credit in connection with, or as a payment mechanism for, Post-Closing

Inventory Orders and Non-LC Purchase Orders and (ii) shall comply with all of the terms and provisions of this Agreement, the License and Conduct of Business Agreement, any other Related Agreement and the TCP Guaranty and Commitment. Buyer hereby represents and warrants that, prior to the date hereof, DEI and Seller have been provided with initial drafts of all material Contracts to be entered into by Buyer or its Affiliates (including the Company, as a Subsidiary of Buyer) in connection with the Company Credit Facility. Buyer shall, from and after the date hereof, provide DEI and Seller with each new or revised draft of all Contracts to be entered into by Buyer or its Affiliates (including the Company, as a Subsidiary of Buyer) or any other Person in connection with the Company Credit Facility that is distributed between the parties thereto (if applicable, redlined to reflect changes therein). In the event that any such new or revised draft Contract relating to the Company Credit Facility reflects modifications, whether direct or indirect, to any DEI Related Provision that have been requested by Buyer or its Affiliates, Wells Fargo or its Affiliates, any lender under the Company Credit Facility or any Person other than DEI, Seller and their Affiliates, then (i) DEI and Seller shall have the right to review and comment on such modifications, which comments shall be considered by Buyer and its Affiliates in good faith, and (ii) the final version of each DEI Related Provision shall be subject to the prior written approval of DEI and Seller in their respective business judgment, such approval or disapproval to be communicated to Buyer within five (5) Business Days after such final versions are provided to DEI; provided that DEI and Seller acknowledge and agree that they have approved the versions of the DEI Related Provisions contained in the Pre-Signing Company Drafts, subject to their right to comment on and approve any direct or indirect modifications thereof that may be proposed by any Person (other than DEI, Seller and their Affiliates). Buyer hereby agrees to use all of its commercially reasonable efforts, and to cause its Affiliates to use all of their commercially reasonable efforts, to resolve or cause the resolution of (including, without limitation, using all of their commercially reasonable efforts to negotiate with the applicable bank or banks and/or their respective Representatives), any issues arising out of or resulting from the exercise by DEI and Seller of their approval rights under this Section 6.11.6 relating to DEI Related Provisions. For purposes of clarification, to the extent DEI's and Seller's approval is required in accordance with the preceding sentences of this Section 6.11.6(a), any credit facility established by Buyer for and on behalf of the Company that is not approved by DEI and Seller in accordance with and as and to the extent provided in this Section 6.11.6 or that does not otherwise comply with the other terms and provisions of this Agreement (including, without limitation, the other terms and provisions of this Section 6.11.6), or that does not comply with all of the terms and provisions of the License and Conduct of Business Agreement, any other Related Agreement and the TCP Guaranty and Commitment, shall not be considered the "Company Credit Facility" for purposes of this Agreement and shall be deemed a breach of this Agreement, the License and Conduct of Business Agreement, any such other Related Agreements and the TCP Guaranty and Commitment. Upon the Closing, subject to satisfaction of the provisions of this Section 6.11.6(a), DEI agrees that it shall cause TDSF to execute and deliver to Wells Fargo, as agent under the Company Credit Facility, the Designation of Secured Lender Under License Agreement included as part of Annex H hereto.

(b) Buyer may, at its sole option, cause the Company Credit Facility (i) to provide for the issuance of Supporting LCs and (ii) to allow for the payment from the proceeds of borrowings thereunder of the Estimated Closing Working Capital Adjustment Amount pursuant to and in accordance with Section 3.3.1. If, as of the Closing, the Company Credit Facility provides for the issuance of Supporting LCs, then Buyer may elect to cause one (1) or more Supporting LCs (which shall be in form and substance approved by DEI and Seller in their respective business judgment) to be issued as of the Closing and, if Buyer so elects, then: (i) Buyer shall notify DEI and Seller at least ten (10) Business Days prior to the Closing Date of its election to have Supporting LCs issued as of the Closing and shall, at least three (3) Business Days prior to the Closing Date, provide DEI and Seller with evidence satisfactory to DEI and Seller in their respective business judgment, that such Supporting LCs will be issued as of the Closing; (ii) Buyer shall, at least ten (10) Business Days prior to the Closing Date, provide DEI and Seller with initial drafts of such Supporting LCs and any related Contracts (to the extent not already reviewed and approved by DEI and Seller pursuant to subparagraph (a) of this Section 6.11.6), and shall, thereafter, provide DEI and Seller with each revised draft of any such Supporting LC and related Contract that is distributed between the parties thereto (redlined to reflect changes therein), and DEI and Seller shall have the right to review and comment on all drafts of such Supporting LCs and Contracts, which comments shall be considered by Buyer in good faith, and all final terms and provisions of such Supporting LCs and Contracts shall be subject to the prior written approval of DEI and Seller in their respective business judgment; and (iii) DEI and Seller shall notify Buyer, at least five (5) Business Days prior to the Closing Date, of (A) the number of outstanding letters of credit issued (but not drawn) pursuant to a Trade LC Facility as of such date in connection with, or as a payment mechanism for, Buyer Ordered Inventory, and the total outstanding obligations relating to Buyer Ordered Inventory as of such date under each such letter of credit, and (B) the estimated Disney Umbrella Freight Services Amounts as of such date. The estimates provided by DEI and Seller pursuant to the preceding subparagraph (iii) of this Section 6.11.6(b) shall not be binding on DEI, Seller or the Company in connection with their preparation of the Closing Balance Sheet, the parties acknowledging and agreeing that such estimates may increase or decrease in connection with the preparation of the Closing Balance Sheet.

(c) If any Supporting LCs that have been approved in writing by DEI and Seller as provided in this Section 6.11.6 are issued as of the Closing, then (if applicable), (i) Buyer Ordered Inventory shall exclude any such inventory with respect to which a Supporting LC has been issued as of the Closing pursuant to and in accordance with this Section 6.11.6 in an amount sufficient to support payment of the entire liability under the issued but undrawn letter of credit under the Trade LC Facility that relates to or covers the inventory that would otherwise be classified as Buyer Ordered Inventory and (ii) the Disney Umbrella Freight Services Amounts shall exclude any such amounts in respect of which a Supporting LC has been issued as of the Closing pursuant to and in accordance with this Section 6.11.6. Following the Closing, DEI and its Affiliates shall be entitled to draw immediately upon demand under any Supporting LC in an amount equal to any amount DEI or its Affiliates is required to pay for any Buyer Ordered Inventory or Disney Umbrella Freight Services if such payment is not reimbursed by the Company within three (3) Business Days after demand for such reimbursement by DEI or its Affiliates to the Company (accompanied by copies of a bill of lading and/or invoice referred to in the next sentence). Notwithstanding the foregoing, and for purposes of clarification, any and all Supporting LCs must provide that DEI and its Affiliates shall be entitled to draw thereunder immediately upon demand without presenting any documentation or other evidence of the right to payment thereunder other than a bill of lading and/or invoice that relate to the Buyer Ordered Inventory or an invoice that relates to the Disney Umbrella Freight Services covered by the applicable

Supporting LC, together with a signed statement of an officer of DEI or one of its Affiliates that, to the knowledge of such officer, the Company has failed to reimburse DEI or its Affiliates for such payment. In the event that, following the Closing, any Supporting LC becomes unenforceable and/or DEI or any of its Affiliates is unable to collect for any reason any part of the payments owed to it under such Supporting LC, then (i) Buyer shall pay to DEI, within one (1) Business Day following DEI's demand therefor, all amounts owed to DEI under such Supporting LC and, until all such amounts are indefeasibly paid in full to DEI, Buyer shall be and remain liable for all such amounts and (ii) Buyer shall reimburse DEI or any of its Affiliates, upon demand, for any and all costs and expenses incurred by DEI or its Affiliates in connection with the collection of payments due and owing to such Person under such Supporting LC. Upon reimbursement (including through a draw on a Supporting LC) of a payment made by DEI or its Affiliates with respect to Buyer Ordered Inventory, the applicable bill of lading, if and to the extent assignable, shall be assigned to the Company (if such bill of lading is not issued in the name of the Company but is instead issued in the name of DEI or any of its Affiliates).

6.11.7 Wells Fargo Credit Facility. Buyer hereby represents and warrants that, prior to the date hereof, DEI and Seller have been provided with initial drafts of all material Contracts to be entered into by Buyer or its Affiliates (including the Company, as a Subsidiary of Buyer) in connection with the Wells Fargo Credit Facility. Buyer shall, from and after the date hereof, provide DEI and Seller with each new or revised draft of all Contracts to be entered into by Buyer or its Affiliates (including the Company, as a Subsidiary of Buyer) or any other Person in connection with the Wells Fargo Credit Facility that is distributed between the parties thereto (if applicable, as redlined to reflect changes therein). In the event that any such new or revised draft Contract relating to the Wells Fargo Credit Facility reflects modifications, whether direct or indirect, to any DEI Related Provision that have been requested by Buyer or its Affiliates, Wells Fargo or its Affiliates, any lender under the Wells Fargo Credit Facility or any Person other than DEI, Seller and their Affiliates, then (i) DEI and Seller shall have the right to review and comment on such modifications, which comments shall be considered by Buyer and its Affiliates in good faith, and (ii) the final version of each DEI Related Provision shall be subject to the prior written approval of DEI and Seller in their respective business judgment, such approval or disapproval to be communicated to Buyer within five (5) Business Days after such final versions are provided to DEI; provided that DEI and Seller acknowledge and agree that they have approved the versions of the DEI Related Provisions contained in the Pre-Signing Wells Draft, subject to their right to comment on and approve any direct or indirect modifications thereof that may be proposed by any Person (other than DEI, Seller and their Affiliates). Buyer hereby agrees to use all of its commercially reasonable efforts, and to cause its Affiliates to use all of their commercially reasonable efforts, to resolve or cause the resolution of (including, without limitation, using all of their commercially reasonable efforts to negotiate with Wells Fargo and/or its Representatives), any issues arising out of or resulting from the exercise by DEI and Seller of their approval rights under this Section 6.11.7 with respect to DEI Related Provisions. For purposes of clarification, to the extent DEI's and Seller's approval is required in accordance with the preceding sentences of this Section 6.11.7, any Contract relating to the Wells Fargo Credit Facility that is not approved by DEI and Seller in accordance with and as and to the extent provided in this Section 6.11.7 or that does not otherwise comply with the other terms and provisions of this Agreement (including, without limitation, the other terms and provisions of this Section 6.11.7), or that does not comply with all of the terms and provisions of the TCP Guaranty and Commitment, the License and Conduct of Business Agreement or any other Related Agreement, shall be deemed a breach of this Agreement, the TCP Guaranty and Commitment, the License and Conduct of Business Agreement and/or any such other Related Agreements.

6.11.8 Distribution Center Observers.

(a) From and after the date hereof and pursuant to and in accordance with this Section 6.11.8, Buyer shall be entitled to designate up to but not more than three (3) persons that are either employees of Buyer or its Affiliates or employees of Buyer's Representatives, which persons must be approved in advance by DEI and Seller in their respective business judgment pursuant to subparagraph (b) of this Section 6.11.8, to be present on site at the Distribution Center (each such person, a **"DC Observer"**). The role of each DC Observer shall be limited solely to that of observation, and no DC Observer shall have any other rights or benefits by virtue of such person's designation as a DC Observer. None of the DC Observers shall (i) in any manner, interfere with the conduct of the business of the Company (or, from and after the Closing, the business of DEI or any of its Affiliates) or (ii) have any rights of oversight with respect to any of the employees of the Company (or, from and after the Closing, any employees of DEI or its Affiliates) or any right to instruct, for any reason or in any manner, such employees. Each DC Observer shall at all times during which such person is a DC Observer remain an employee of Buyer or one of its Affiliates or Representatives, and as between Buyer and DEI and its Affiliates, Buyer shall be solely responsible for paying all costs related to or arising in connection with each DC Observer, including, without limitation, any employment-related costs. In addition, Buyer shall indemnify and hold harmless DEI and its Affiliates for any Loss incurred by any of them in connection with, or as a result of (i) the exercise of Buyer's rights under this Section 6.11.8 and/or (ii) the designation, placement, removal or replacement of any person as a DC Observer.

(b) If Buyer elects to exercise its rights to designate one (1) or more DC Observers, Buyer shall give prior written notice thereof to DEI and Seller, which notice shall state: (i) that Buyer is electing to exercise its rights pursuant to this Section 6.11.8, (ii) the name of the person or persons designated as a DC Observer, and (iii) the position held by each such person at Buyer or the applicable Affiliate or Representative of Buyer. DEI and Seller shall, as soon as practicable after receipt of such notice, inform Buyer of their approval or disapproval of Buyer's designee or designees, and, upon approval of a designee by DEI and Seller in their respective business judgment, such designee shall become a DC Observer. In the event that any designee of Buyer is disapproved by DEI and/or Seller, Buyer shall be entitled to select a replacement designee, and shall repeat the procedures outlined in this subparagraph (b) until a designee is approved by DEI and Seller in accordance with this Section 6.11.8. Buyer, DEI and Seller shall each have the right, in their respective sole discretion, to remove any person from the role of DC Observer, for any reason or no reason at all. In the event that Buyer removes any person from the role of DC Observer or any person resigns from the role of DC Observer, Buyer shall give written notice of such removal or resignation to DEI and Seller. In the event that DEI or

Seller removes any person from the role of DC Observer, DEI or Seller, as applicable, shall give written notice of such removal to Buyer. Neither DEI nor any of its Affiliates shall have any responsibility or liability for or in connection with the removal of any person from the role of DC Observer, whether such removal is effected by Buyer, DEI, Seller or their respective Affiliates or Representatives. If, upon removal or resignation of any person from the role of DC Observer, Buyer elects to designate a replacement DC Observer, then such replacement shall be designated pursuant to and in accordance with the provisions of this Section 6.11.8 (including, without limitation, this subparagraph (b)).

(c) Buyer's rights pursuant to this Section 6.11.8 to designate one (1) or more DC Observers and to have such DC Observers present on-site at the Distribution Center shall terminate upon the termination of the Transitional Distribution Services Agreement, and from and after such date, Buyer shall have no right to have any of its employees or the employees of its Affiliates or Representatives present at the Distribution Center.

6.11.9 SunTrust Agreement. DEI and Seller agree that if, and from and after the date on which, DEI and Seller determine that SunTrust (or its successor) has refused to provide a Consent under the SunTrust Agreement to the transactions contemplated by this Agreement, notwithstanding compliance by Buyer, DEI and Seller with Section 6.6.2 (with DEI to provide Buyer with written notice of such inability to obtain a Consent within five (5) Business Days of such determination), then Buyer shall be entitled, in its sole discretion, to negotiate with SunTrust (or another servicing bank) prior to the Closing, with respect to an agreement pursuant to which the Company would be entitled to accept Mastercard and Visa credit and charge cards in the United States following the Closing, subject to the terms and conditions of subparagraphs (A), (B) and (C) of Section 6.10.2. The parties agree that the failure by DEI or Seller to obtain the Consent of SunTrust (or, as applicable, its successor) under the SunTrust Agreement in connection with the transactions contemplated hereby shall not constitute a breach of this Agreement by DEI or Seller for any purpose (including, without limitation, for purposes of Sections 9.1.3, 9.1.4 and 9.1.5), and no such failure by DEI or Seller shall relieve Buyer of its obligation to effect the Closing as contemplated herein.

6.11.10 Company Plans. DEI and Seller shall terminate the Company Plans (or, as applicable, shall cause the Company Plans to be terminated) prior to the Closing.

6.11.11 Certain Transactions by TCP. In the event that any Affiliate of TCP (i) becomes an "Affiliate Guarantor" as defined in and pursuant to the terms of the TCP Guaranty and Commitment or (ii) becomes bound by the obligations, restrictions or provisions pertaining to TCP under the TCP Guaranty and Commitment pursuant to the terms and conditions contained in the definition of "TCP" under the TCP Guaranty and Commitment (assuming, for purposes of this Section 6.11.11, that the TCP Guaranty and Commitment had been executed and delivered and was in effect as of the date hereof) (any such Affiliate of TCP described in subparagraphs (i) and (ii), an **"Obligor"**), Buyer shall promptly thereafter provide written notice to DEI and Seller of such event, and the obligation of the parties to execute and deliver (or cause their Affiliates to execute and deliver) certain documents as set forth in Section 6.16 shall apply to the execution and delivery of the TCP Guaranty and Commitment (or, as applicable, a guarantee of the obligations of TCP thereunder) by such Obligors.

6.11.12 Certain Employee Cards and Other Property. Buyer hereby agrees and acknowledges that, prior to the Closing, the Company or its Affiliates shall be entitled to collect, from any and all of the Continuing Employees, the following items that were issued to or otherwise granted to such Continuing Employees prior to the Closing (collectively, the **"Disney Issued Property"**): (i) all identification cards issued by the Company or its Affiliates, (ii) all business cards given to the Continuing Employees identifying the Continuing Employees as employees of the Company or its Affiliates, (iii) all employee credit or charge cards, benefit cards, and/or other payment instruments issued by the Company or its Affiliates, including, without limitation, "Silver Passes" for Theme Parks of the Company or its Affiliates, Disney's Visa Card, procurement cards and telephone calling cards, and (iv) all vehicles identified in item 21 of TDS Schedule 1.1(d). To the extent that prior to the Closing the Company or its Affiliates do not collect all of the Disney Issued Property from the Continuing Employees, Buyer shall, from and after the Closing, provide reasonable assistance to DEI and its Affiliates, and shall cooperate with them, to procure the return of all such Disney Issued Property from the Continuing Employees to DEI and its Affiliates. From and after the Closing, Buyer shall indemnify and hold DEI and its Affiliates harmless from any Loss incurred by any of them in connection with the use of any Disney Issued Property after the Closing by any of the Continuing Employees.

6.12 Solvency Opinion. DEI, Seller and/or one or more of their Affiliates shall obtain an opinion, addressed to DEI and Seller, from Jefferies & Company, Inc., or if such firm is unable to render such opinion, such other firm as DEI or Seller shall select in its respective sole discretion, regarding the solvency of TDS USA following the consummation of the transactions contemplated by this Agreement, the form and content thereof to be satisfactory to DEI and Seller in their respective business judgment. DEI and Seller shall provide a copy of such solvency opinion to Buyer. DEI and Seller, on the one hand, and Buyer, on the other hand, shall each be responsible for paying one-half of all fees, expenses and costs of the firm rendering such solvency opinion incurred in connection with obtaining such solvency opinion, provided, that Buyer shall not be required to pay more than One Hundred Thousand Dollars ($100,000) of such fees, expenses and costs.

6.13 Company Audit. At least five (5) Business Days prior to the Closing, DEI and Seller shall cause to be prepared and delivered to Buyer the combined balance sheets of TDS USA and TDS Canada as of September 27, 2003 and June 26, 2004 and the related combined statements of operations and retained earnings and of cash flows of TDS USA and TDS Canada for each of the two (2) fiscal years ended September 28, 2002 and September 27, 2003, respectively, and the nine (9) months ended June 26, 2004, which shall be prepared in accordance with GAAP and audited by PWC (collectively, the **"TDS Audited Financial Statements"**). TCP shall have the right to include such TDS Audited Financial Statements in its current report on Form 8-K filed with the SEC relating to the transactions contemplated hereby and in any other reports or registration statements filed by TCP with the SEC. DEI and Seller, on the one hand, and Buyer, on the other hand, shall each be responsible for paying one-half of the auditor fees and

reasonable and documented out-of-pocket auditor expenses incurred in connection with such audit, provided, that Buyer shall not be required to pay more than Two Hundred Fifty Thousand Dollars ($250,000) of such fees and expenses.

6.14 No Competing Offers.

6.14.1 Neither DEI nor Seller shall, nor shall either of them authorize or permit the Company or their respective Affiliates or any of the officers, directors, employees, investment bankers, financial advisors, attorneys, accountants or other representatives of DEI, Seller, the Company or their respective Affiliates to, contact any person for the purpose of soliciting any Competing Offer, or participate in any discussions or negotiations, or provide third parties with any nonpublic information, relating to any such Competing Offer; provided, that, if the Board of Directors of TWDC determines in good faith and based on advice of its financial advisor and after consultation with outside legal counsel that a Competing Offer that did not result from a breach of this Section 6.14.1 is or might reasonably be considered to be a Superior Proposal, DEI, Seller, the Company and their Affiliates may (a) furnish information with respect to the Company, DEI, Seller and their Affiliates to any Person under a customary confidentiality agreement, which shall not be less favorable to DEI and Seller in any material respect than the Confidentiality Agreement, (b) participate in discussions and negotiations regarding such Competing Offer and (c) if the Board of Directors of TWDC determines in good faith and based on advice of counsel that such Competing Offer is a Superior Proposal and that, in order for such Board of Directors to comply with its fiduciary duties, it is required to cause the acceptance of such Competing Offer by DEI and/or its Affiliates, accept such Superior Proposal, enter into a letter of intent or understanding (whether or not binding) and/or binding definitive agreements therefor and terminate this Agreement under Section 9.1.6, provided, that, prior to taking any such action under this subparagraph (c) of this Section 6.14.1, TWDC shall have provided Buyer with at least three (3) Business Days written notice of its intention to do so and of the material economic terms of such Superior Proposal.

6.14.2 DEI and Seller shall promptly advise Buyer in writing of the identity of any Person who makes a Competing Offer as to which DEI or its Affiliates intend to engage in any of the activities described in subparagraphs (a), (b) or (c) of Section 6.14.1.

6.15 Transitional Services Agreements; Bifurcation of License and Conduct of Business Agreement; Operating Manual; Additional Documents to be Prepared Prior to Closing.

6.15.1 Transitional Services. Buyer, on the one hand, and DEI and Seller, on the other hand, hereby agree to provide to each other (or, as applicable, to cause their Affiliates to so provide) the transitional services described in subparagraphs (a)-(d) (inclusive) of this Section 6.15.1. Such transitional services shall be provided during the period beginning on the Closing Date and ending on the date specified in the applicable transitional services agreement.

(a) DEI and/or its Affiliates, on the one hand, and Buyer, the Company and/or their Affiliates, on the other hand, shall provide to each other certain administrative services and DEI or its Affiliates shall provide certain office facilities to the Company, in each case on a transitional basis and in accordance with the terms set forth on TDS Schedule 6.15.1(i) (the **"Transitional Administrative Services Agreement"**).

(b) DEI and/or its Affiliates shall provide the Company with certain inventory distribution services through the Distribution Center operated by the Company prior to the Closing on a transitional basis and in accordance with the terms set forth on TDS Schedule 6.15.1(ii) (the **"Transitional Distribution Services Agreement"**).

(c) DEI and/or its Affiliates, on the one hand, and Buyer, the Company and/or their Affiliates, on the other hand, shall provide to each other certain Information Technology services on a transitional basis and in accordance with the terms set forth on TDS Schedule 6.15.1(iii) (the **"Transitional Information Technology Services Agreement"**).

(d) The Company shall operate the Deferred Stores (including any Approved Deferred Stores) and the Disney Retained Stores (other than the Flagship Stores) from and after the Closing Date and, as applicable, conduct the closure thereof, in each case in accordance with the terms set forth on TDS Schedule 6.15.1(iv) (the **"Transitional Disney Retained Stores Agreement"**).

6.15.2 Bifurcation of License and Conduct of Business Agreement. Prior to the Closing, at the election of DEI and Seller (to be exercised in their respective sole discretion), DEI, Seller and Buyer shall negotiate in good faith and in a commercially reasonable manner and as expeditiously as practicable to bifurcate the License and Conduct of Business Agreement into two (2) separate Contracts, one consisting of a License Agreement pertaining primarily to the Intellectual Property licensed by TDS Franchising to the Company thereunder and the royalties arising therefrom, and the other consisting of a Conduct of Business Agreement pertaining primarily to the operation of the Stores by the Company thereunder. DEI and Seller shall take the lead in drafting and revising such bifurcated Contracts. Both parties agree that, in connection with such bifurcation, they shall in good faith maintain the relationship of the parties thereunder as if it were a single Contract (e.g., as appropriate, including cross-termination and other comparable provisions to ensure that the bifurcation of the combined Contract does not alter the nature of the relationship between the parties thereunder), and that the resulting bifurcated Contracts shall, taken together, not contain, reflect or create any change to the respective rights and obligations of the parties that would have existed among the parties to the combined Contract if it were not so bifurcated. In addition, in connection with such bifurcation, the parties may elect to relocate portions of the bifurcated License Agreement and Operating Agreement into schedules or exhibits thereto as the parties deem reasonable and appropriate. In the event that the License and Conduct of Business Agreement is bifurcated prior to the Closing in the manner provided in this Section 6.15.2, then all references in this Agreement to the License and Conduct of Business Agreement shall be deemed to be references to the bifurcated Contract in which the applicable provisions reside or, if applicable, to both such

Contracts, and the obligations of the parties to execute and deliver (or to cause their Affiliates to execute and deliver) certain documents as set forth in Section 6.16 shall apply to both the License Agreement and the Conduct of Business Agreement.

6.15.3 Operating Manual. The Operating Manual contemplated by the License and Conduct of Business Agreement shall be substantially in the form attached hereto as TDS Schedule 6.15.3.

6.15.4 Additional Documents. Prior to the Closing, DEI, Seller and Buyer shall negotiate and complete in good faith and in a commercially reasonable manner and as expeditiously as practicable the terms and conditions of any additional agreements, documents and instruments as DEI or Seller shall determine are reasonably necessary, desirable or appropriate in order to consummate the transactions contemplated by this Agreement, which agreements, documents and instruments shall be subject to the mutual approval of the parties in their respective business judgment, except as to matters pertaining to any Intellectual Property of DEI or its Affiliates, which shall be subject to the approval of DEI in its sole discretion and the approval of Buyer in its business judgment. DEI and Seller shall take the lead in drafting and revising any and all such agreements, documents and instruments.

6.16 Execution and Delivery of Documents. Provided that the conditions to the obligations of the parties to consummate the transactions contemplated by this Agreement as set forth in Article VIII (other than Sections 8.2.3 and 8.3.5) have been satisfied or waived, on the Closing Date, each of DEI and Buyer shall, or shall cause their respective Affiliates to, execute and deliver the documents necessary to satisfy the condition set forth in Section 8.2.3 (in the case of DEI) or Section 8.3.5 (in the case of Buyer).

6.17 Independent Directors. Prior to the Closing, Buyer, DEI and Seller shall jointly select two (2) Persons meeting the requirements of "Independent Directors" as defined in the License and Conduct of Business Agreement who shall be willing to serve as directors (or in a comparable capacity in the case of any limited liability company or other Entity) and shall be elected as directors (or to comparable positions in the case of any limited liability company or other Entity) of (i) Buyer, TDS USA (or, as applicable, New TDS LLC) and each of their respective Subsidiaries (other than TDS Canada) on the Closing Date immediately following the consummation of the Membership Unit Acquisition and the Share Acquisition and (ii) TDS Canada (or, as applicable, its successor) within twenty (20) Business Days following the Closing Date or, if and only if the Canada Reincorporation is delayed beyond the twentieth (20th) Business Day following the Closing as a result of an action taken, or failed to be taken, in error on or prior to the Closing by DEI or its Affiliates and having the effect specifically described in the first sentence of Section 2.6.2, then on the Canada Reincorporation Date.

6.18 Initial Equity Investment. At least two (2) Business Days prior to the Closing, Buyer shall have, or shall otherwise have available to it, the Fifty Million Dollars ($50,000,000) of equity capital in the form of cash or cash equivalents that is required to be invested in TDS USA immediately following the consummation of the Membership Unit Acquisition and the Share Acquisition pursuant to Section 7.13, and Buyer shall on such date that is two (2) Business Days prior to the Closing provide DEI and Seller with evidence of the foregoing in a form reasonably satisfactory to DEI and Seller.

## ARTICLE VII
## CONTINUING COVENANTS

7.1 Tax Matters.

7.1.1 Tax Returns. DEI or Seller shall prepare or cause to be prepared and file or cause to be filed all Tax Returns required to be filed by or with respect to the Company that relate to taxable periods ending on or before the Closing Date, including all such Tax Returns that are required to be filed after the Closing Date. Buyer shall, upon request, cause the Company to execute any such Tax Returns required to be executed by the Company in a timely manner prior to filing by DEI or Seller. DEI or Seller shall timely pay all Taxes due under such returns to the extent the amount thereof exceeds the amount of Taxes accrued or otherwise reflected as a Current Liability on the Final Closing Balance Sheet and/or the Final Subsequent Closing Balance Sheet, and Buyer shall, or shall cause the Company to, timely pay all Taxes due under such returns up to the amount of Taxes accrued or otherwise reflected as a Current Liability on the Final Closing Balance Sheet and/or the Final Subsequent Closing Balance Sheet. Buyer shall not amend or refile any Tax Return with respect to the Company for any period ending on or before the Closing Date without the prior written consent of DEI, which consent may be granted or withheld in DEI's sole discretion. Buyer shall prepare or cause to be prepared and file or cause to be filed all Tax Returns required to be filed with respect to the Company that relate to taxable periods ending after the Closing Date, including all Tax Returns for taxable periods that begin before the Closing Date and end after the Closing Date, and Buyer shall, or shall cause the Company to, timely pay all Taxes due under such returns; provided, however, that, to the extent the amount of Taxes attributable to periods before and including the Closing Date (but excluding Taxes attributable to transactions following the Closing and outside of the ordinary course of business) exceeds the amount of Taxes accrued or otherwise reflected as a Current Liability on the Final Closing Balance Sheet and/or the Final Subsequent Balance Sheet, DEI or Seller shall pay Buyer an amount equal to the amount of such excess at least ten (10) Business Days prior to the later of the time that (a) Buyer is required to pay such taxes and (b) Buyer provides DEI and Seller with a copy of such returns and its determination of the portion of such Taxes attributable to the taxable period ending on the Closing Date.

7.1.2 Cooperation on Tax Matters. Buyer, DEI and Seller shall, and Buyer shall cause the Company to, cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns under Section 7.1.1 and any audit, litigation, or other proceeding with respect to Taxes (a **"Tax Proceeding"**). Such cooperation shall include the retention and (upon the other party's request) the provision of records and information that are reasonably relevant to any such Tax Proceeding and the availability of employees on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Buyer, DEI and Seller agree (A) to retain all books and records with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until the expiration of the statute of

limitations or, in the case of TDS Canada, the expiration of any period during which a recognized document assessing liability for Tax may be issued by a Governmental Entity (and, to the extent notified by Buyer, DEI or Seller, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority, and (B) to give the other party reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other party so requests, Buyer, DEI or Seller, as the case may be, shall allow the other party to take possession of such books and records to the extent they would otherwise be destroyed or discarded. Each of Buyer, DEI and Seller shall bear its respective costs and expenses in connection with any Tax Proceeding; provided, that, (i) if such Tax Proceeding relates solely to the period after the Closing Date, Buyer shall reimburse DEI and Seller, as applicable, for any out-of-pocket expenses (including, without limitation, fees and expenses of attorneys and other professionals) reasonably incurred by DEI or Seller, as applicable, in connection therewith and (ii) if such Tax Proceeding relates solely to the period before the Closing Date, DEI or Seller shall reimburse Buyer for any out-of-pocket expenses (including, without limitation, fees and expenses of attorneys and other professionals) reasonably incurred by Buyer in connection therewith. Any information obtained under this Section 7.1.2 or under any other Section hereof providing for the sharing of information or the review of any Tax Return or other schedule relating to Taxes shall be subject to Section 11.9.

7.1.3 Transaction Taxes. Any sales, use, transfer, documentary, registration and other similar taxes (including related penalties (civil or criminal), additions to tax and interest) imposed by any Governmental Entity with respect to the transactions (other than the Pre-Closing Transactions) contemplated by this Agreement **("Transaction Taxes"**) shall be paid by the party having primary liability therefor under applicable Law (or, if Seller and DEI, on the one hand, and Buyer, on the other hand, share primary liability under applicable Law, then such Transaction Tax shall be shared equally). Seller and/or DEI shall be required to pay any Taxes imposed by any Governmental Entity with respect to the Pre-Closing Transactions. The party required to pay any Transaction Tax shall provide written notice to the other party of the payment of and/or a written response to such other party upon any request for information regarding the status of any Transaction Taxes. Such paying party shall also be responsible for (i) administering the payment of such Transaction Taxes, (ii) defending or pursuing any proceedings related thereto, and (iii) paying any expenses related thereto. Such paying party shall give prompt written notice to the other party of any proposed adjustment or assessment of any Transaction Taxes or of any examination of the transactions contemplated hereby in a sales, use, transfer or similar tax audit. Neither party shall negotiate a settlement or compromise of any Transaction Taxes for which the other party has liability under applicable Law without the prior written consent of such other party, which consent shall not be unreasonably withheld, conditioned or delayed. With respect to the Approved Deferred Stores, within twenty (20) Business Days following the Subsequent Closing Date, Buyer shall cause the Company to (a) provide DEI and Seller with a copy of a valid seller's permit (or equivalent retailer's license) in all states where the Approved Deferred Stores are located and in which the Company is engaged or will be engaged in the business of selling retail merchandise and (b) certify that the inventory property of the Approved Deferred Stores will be sold at retail.

7.1.4 Tax Refunds. Any Tax refunds (including any refund of an overpayment of Tax and any right to a Tax refund that is credited against any Tax due for a period ending after the Closing) received by TDS USA, TDS Canada or Buyer after the Closing that are attributable to Taxes paid (or overpaid) with respect to income, activities or operations of TDS USA or TDS Canada for periods ending on or before the Closing Date, including, without limitation, those refunds listed on TDS Schedule 7.1.4, shall be paid by the Company and/or Buyer (as applicable) to DEI and its Affiliates within five (5) Business Days after such refund is received. From and after the Closing, DEI and its Affiliates shall be responsible for obtaining and pursuing all such Tax refunds described in the preceding sentence, and the cooperation provisions of Section 7.1.2 shall apply to any such claim for a Tax refund as if such claim constituted a Tax Proceeding.

7.2 Other Cooperation.

7.2.1 Buyer. After the Closing, Buyer will, and will cause the Company to, afford to DEI, Seller and their Affiliates and to their accountants, counsel and other Representatives, reasonable access during normal business hours upon reasonable prior notice to the books and records of the Company and the employees of Buyer and the Company (or any successors thereto). DEI, Seller and their Affiliates and Representatives may, at the expense of DEI or Seller, make copies of such books and records.

7.2.2 Seller and DEI. After the Closing (or as applicable, the Subsequent Closing), to the extent permitted by applicable Law (including, without limitation, privacy regulations), and to the extent not covered by Section 7.2.3, DEI and Seller will (i) deliver and will cause their Affiliates to deliver to Buyer the books and records relating solely to the Business (and not in any manner relating to the Intellectual Property of DEI, Seller or their Affiliates or any other matters specifically addressed in the License and Conduct of Business Agreement) that were not delivered to Buyer at or prior to the Closing (or the Subsequent Closing, as applicable) and that were not, as of the Closing Date (or the Subsequent Closing Date, as applicable), located at the premises that were transferred to Buyer on such date or within the portion of the Corporate Headquarters that the Company continues to occupy following the Closing and (ii) afford Buyer and its Affiliates and Representatives reasonable access, during normal business hours upon at least five (5) Business Days' advance written notice, to pre-Closing financial information relating solely to the Business (and not in any manner (A) relating to the Intellectual Property of DEI, Seller or their Affiliates or any other matters specifically addressed in the License and Conduct of Business Agreement or (B) combined with any financial information of DEI, Seller or their Affiliates) that is readily available (without diligence or expenditure of money) and in the possession and control of DEI, Seller and their Affiliates and not already delivered to Buyer pursuant to the preceding subparagraph (i).

7.2.3 Records Relating to Transition Services. At any time up to ninety (90) days following the Closing Date, Buyer may, by written notice to DEI and Seller, request any books, records or other information related to the services to be provided by Seller or its Affiliates under the Transitional Administrative Services Agreement, the Transitional Distribution Services Agreement and the Transitional Information Technology Services Agreement that Buyer reasonably believes will be required following the Closing in connection with the transition of the functions performed under such agreements to the Company. DEI and Seller shall,

during the period beginning on the Closing Date and ending on the Transition Services Termination Date, provide, or cause their Affiliates to provide, to Buyer such books, records and other information that are so requested, provided, that, (i) such books, records and other information are readily available to DEI, Seller or their Affiliates, (ii) the disclosure of such books, records and other information to Buyer and its Affiliates is not restricted or prohibited by Contract or applicable Law (including, without limitation, privacy regulations), and (iii) following the Closing, the Company shall, within twenty (20) Business Days after receipt of an invoice therefor from DEI or Seller, via wire transfer of same day funds to an account designated by DEI or Seller, reimburse DEI, Seller and their Affiliates for all costs incurred by them in connection with the provision of such books, records and other information, plus an amount equal to fifteen percent (15%) of such costs. Buyer and its Affiliates shall have no audit rights with respect to such reimbursable costs or the calculation thereof under this Section 7.2.3, but Seller shall provide Buyer with a certification of such costs executed by an officer of Seller or one of its Affiliates; provided, that, notwithstanding such certification, Buyer shall not be entitled to receive any supporting documentation, invoices, receipts, bills, calculations or other evidence with respect to the determination of such costs nor shall Buyer be entitled to any inspection, audit or comparable rights with respect to such certification or the determination of such costs, the foregoing limitations to apply whether any demand or request is made by Buyer pursuant to the terms hereof or in connection with any dispute or controversy that may arise hereunder and any attempted discovery thereof in connection with such dispute or controversy, whether by way of document production, interrogatories, depositions or other discovery method. Notwithstanding anything to the contrary contained in this Section 7.2, to the extent that the books, records and other information referred to in this Section 7.2.3 are not requested by written notice from Buyer to DEI and Seller at least thirty (30) days prior to the Closing Date, DEI and Seller shall not be required to provide to Buyer any such books, records or other information if (i) neither DEI nor Seller has the necessary, desirable or appropriate personnel to extract, collect or otherwise transmit such information to Buyer or (ii) the provision of such books, records or other information is otherwise impracticable for DEI and/or Seller (in the case of each of subparagraphs (i) and (ii) as determined by DEI in its sole discretion).

7.3 Effect of Due Diligence and Related Matters. USA Purchaser and Canadian Purchaser each represents that it is a sophisticated Entity that was advised by knowledgeable counsel and financial and accounting advisors and, to the extent it deemed necessary, other advisors in connection with this Agreement and has conducted its own independent review and evaluation of the Company and the Business. Accordingly, USA Purchaser and Canadian Purchaser each covenants and agrees that (i) there are no representations or warranties by or on behalf of DEI, Seller or their Affiliates or Representatives except for those expressly set forth in this Agreement and the Related Agreements, and, except as stated herein or therein, it has not relied and will not rely upon any document or written or oral information (including, without limitation, any projections or other financial data) furnished to or discovered by it or its Representatives, including, without limitation, the Confidential Information Memorandum dated September 2003 furnished to TCP, Buyer or their Representatives and any projections, financial data or other information contained therein, and (ii) to the fullest extent permitted by Law, the rights and obligations of USA Purchaser and Canadian Purchaser with respect to the transactions contemplated hereby will be solely as set forth in this Agreement and the Related Agreements.

7.4 Continuing Employee Matters.

7.4.1 Employees of Business. Each of DEI, Seller and Buyer acknowledges and agrees that (i) all Continuing Employees will remain employees of the Company immediately following the consummation of the Membership Unit Acquisition, the Share Acquisition and the other transactions contemplated hereby, and (ii) following the date hereof and prior to the Closing Date, TDS Schedule 7.4.1 shall not be modified without the prior written consent of DEI, Seller and Buyer (to be granted or denied in their respective business judgment), except to the extent necessary to reflect (a) the voluntary termination of employment by any Continuing Employee listed on TDS Schedule 7.4.1, (b) the involuntary termination of employment of any Continuing Employee listed on TDS Schedule 7.4.1 not in violation of Section 6.3 or for cause or any other legal requirement, (c) the hiring of any employee by the Company not in violation of Section 6.3 or (d) any change in the position of any Continuing Employee listed on TDS Schedule 7.4.1 not in violation of Section 6.3. Buyer represents and warrants to DEI and Seller that TDS Schedule 7.4.1 includes the following Employees and only the following Employees: (i) all Employees located at the Corporate Headquarters who have received an Employee Offer Letter, except for any such Employee who received an Employee Offer Letter but either rejected it or whose employment with the Company was terminated prior to the date of this Agreement or is to be terminated prior to the Closing Date, whether voluntarily or involuntarily, and (ii) all Employees located at the Corporate Headquarters who shall, if any such Employee has not as of the date hereof received an Employee Offer Letter, receive an Employee Offer Letter on or prior to the Closing. Subject to applicable Law, DEI and Seller shall ensure that any Person who is not a Continuing Employee is no longer employed by the Company upon the Closing Date, and DEI and Seller shall indemnify and hold Buyer and its Affiliates harmless from and against any and all Loss arising directly or indirectly from, out of or based on the termination by TDS USA or TDS Canada of any such Person who is not a Continuing Employee. Buyer acknowledges that certain of the Continuing Employees currently are employed by the Company pursuant to visa petitions, and Buyer acknowledges and agrees that, from and after the Closing, the Company shall be solely responsible for compliance by the Company and such Employees with all applicable immigration Laws, including, without limitation, Laws pertaining to appropriate work authorizations.

7.4.2 Obligations to Continuing Employees; Cessation of Benefits Under Disney Plans. From and after the Closing, Buyer and its Affiliates shall be subject to the obligations with respect to the Continuing Employees as set forth in the License and Conduct of Business Agreement. Buyer acknowledges and agrees that, from and after the Closing, for purposes of the Disney Plans, the Continuing Employees shall be treated as employees whose employment with the Company has been terminated; provided, however, that DEI and Seller or their insurers shall be responsible for all expenses incurred prior to the Closing by any Continuing Employee that are reimbursable under any Employee Benefit Plan.

7.4.3 COBRA Continuation Coverage. From and after the date hereof and after the Closing Date, DEI and Seller shall be solely responsible (apart from COBRA premiums required to be paid by or with respect to "qualified beneficiaries" as such term is defined in COBRA) for any and all COBRA continuation coverage costs, liabilities and obligations with respect to any

employees of the Company who, as of the date hereof or at any time before the Closing, have lost coverage under any Employee Benefit Plan sponsored or maintained by DEI or its ERISA Affiliates or to which DEI or its ERISA Affiliates are obligated to contribute, which is subject to COBRA, as a result of a "qualifying event" (as defined in COBRA) that occurred on or before the Closing Date.

7.4.4 Retention Program for Continuing Employees. DEI and Seller shall be solely responsible for all liabilities and obligations arising under the Retention Program incurred in respect of periods ending on or before December 31, 2004. In the event that the Closing Date does not occur on or before December 31, 2004, DEI and Seller shall, at Buyer's sole cost and expense, cause the Retention Program to remain in effect with respect to the Continuing Employees that are, as of the date hereof, covered under the terms of the Retention Program until the earlier to occur of (i) the Closing Date and (ii) February 15, 2005 (the **"Extension Date"**). No later than ten (10) Business Days following submission by DEI or any of its Affiliates of an invoice or other comparable request for reimbursement to Buyer, Buyer shall pay directly to DEI or such Affiliates an amount equal to any and all costs and expenses incurred by DEI or its Affiliates in respect of or in connection with the Retention Program for such Continuing Employees from January 1, 2005 through and including the Extension Date.

7.4.5 Retention Program for Transition Employees. DEI, Seller and Buyer hereby agree and acknowledge that a retention program (the **"Transition Retention Program"**) relating to certain current employees of the Company that will, following the Closing, be employed and used by DEI or its Affiliates to provide transition services to the Company pursuant to the Transitional Administrative Services Agreement, the Transitional Distribution Services Agreement and the Transitional Information Technology Services Agreement (such employees, as they exist as of the Closing Date, the **"Transition Employees"**), has been (or, as applicable, will be) established by DEI or its Affiliates pursuant to and in accordance with the letter agreement (the **"Transition Letter Agreement"**), dated August 27, 2004, between TCP and DEI. In consideration for establishing the Transition Retention Program, subject to the occurrence of the Closing hereunder, USA Purchaser hereby agrees to cause, and shall cause, TDS USA (or, as applicable, New TDS LLC) to pay DEI, by wire transfer of immediately available funds pursuant to wire instructions delivered by DEI to USA Purchaser, an amount equal to Two Million Dollars ($2,000,000) (the **"Retention Payment"**) on the earlier of the date (the **"Transition Services Termination Date"**) that is (x) ninety (90) days following the Closing Date and (y) March 1, 2005. In addition, Buyer, DEI and Seller hereby agree and acknowledge that (i) DEI shall consult, in good faith, with TCP regarding the payments to be made to Transition Employees pursuant to, and other financial components of, the Transition Retention Program; provided, however, that the final determination of the amount of payments to be made to Transition Employees pursuant to, and all other components of, the Transition Retention Program shall be made by DEI in its sole discretion; (ii) the Retention Payment will be paid by USA Purchaser to DEI regardless of the actual costs and expenses incurred by DEI or its Affiliates in connection with the Transition Retention Program; (iii) none of DEI or its Affiliates shall have any duty or obligation to account to Buyer or its Affiliates for the use of any part of the Retention Payment by DEI or its Affiliates (provided, that, DEI hereby agrees that, unless there is a departure of any one (1) or more of the Transition Employees prior to the Transition Services Termination Date, it shall allocate, or, as applicable, shall cause its Affiliates to allocate, the entire amount of the Retention Payment for use in connection with the Transition Retention Program or other costs and expenses associated with and incurred by DEI or its Affiliates for providing the transition services described in this Section 7.4.5 to the Company); and (iv) neither Buyer nor any of its Affiliates shall have any audit rights with respect to the Transition Retention Program or the payments made, or other benefits granted, thereunder.

7.4.6 Closing Date Payroll. DEI or one of its Affiliates shall, with respect to the Continuing Employees, issue on the Closing Date or as soon as reasonably practicable thereafter, a final payroll check to each Continuing Employee for the period through and including the Closing Date. All payroll checks for periods ending after the Closing Date shall be issued by the Company, as a Subsidiary of Buyer.

7.4.7 Employee Indemnification Agreement. The parties hereby acknowledge and agree and, by executing the Acquisition Agreement Guarantee TCP acknowledges and agrees, that nothing contained in this Agreement shall modify, limit or restrict in any manner whatsoever the obligations of TCP under the Employee Indemnification Agreement.

7.4.8 No Third Party Beneficiaries. Nothing in this Section 7.4 or elsewhere in this Agreement will be deemed to make any Continuing Employee or other employee of the Company a third party beneficiary of this Agreement.

7.5 Post-Closing Obligations Regarding Retained Asset Agreements and Participation Agreements.

7.5.1 In the event that, as of the Closing Date, any Retained Asset Agreements have not been distributed to Seller in connection with the LLC Distribution, Transferred to Canadian Transferee in connection with the Canadian Transfer or assigned to DEI or any of its Affiliates (other than the Company), then, from and after the Closing Date, with respect to each such Retained Asset Agreement: (a) each of DEI, Seller and Buyer, in good faith cooperation with each other and with DEI taking the lead in such negotiations, shall, and Buyer shall cause the Company to, use commercially reasonable efforts to negotiate and complete the assignment to DEI or any of its Affiliates of such Retained Asset Agreement in the manner contemplated by Sections 6.9.2 and 6.9.3, unless and until such assignment is completed or it becomes evident, in DEI's business judgment, that such assignment is not reasonably practicable without undue cost or delay; (b) for so long as such Retained Asset Agreement remains unassigned, Buyer shall, and shall cause the Company and their respective Affiliates to, (i) take such actions and execute such documents as may be reasonably necessary, desirable or requested by DEI or Seller in order to ensure that DEI and its Affiliates shall enjoy their rights and perform their obligations pursuant to such Retained Asset Agreement, (ii) cooperate with DEI and Seller in good faith and using commercially reasonable efforts in connection with the enforcement and protection of the rights of DEI and its Affiliates under such Retained Asset Agreement, (iii) indemnify and hold DEI and Seller harmless from and against liabilities arising under such Retained Asset Agreement as a result of any action or omission by Buyer or any of its Affiliates other than actions or

omissions taken or not taken, as the case may be, in accordance with the requirements of such Retained Asset Agreement or at the request of DEI, Seller and/or their Affiliates and (iv) unless otherwise agreed in writing by DEI in its sole discretion, not knowingly take any action that would be reasonably likely to result in any diminishment or elimination of any benefits, or increase in costs, under any such Retained Asset Agreement to DEI or its Affiliates, including any amendment or modification thereof (or, if such action is knowingly taken or done, use its commercially reasonable efforts to cure the same as soon as reasonably practicable); and (c) DEI and Seller shall indemnify and hold harmless Buyer from and against liabilities arising under such Retained Asset Agreement (except to the extent of Buyer's indemnity obligation under subparagraph (b)(iii) of this Section 7.5).

7.5.2 In the event that, as of the Closing Date, TDS USA has not entered into a Monogram Participation Agreement and/or, as applicable, a ValueLink Participation Agreement, then, from and after the Closing Date, each of DEI, Seller and Buyer, in good faith cooperation with each other and with DEI taking the lead in such negotiations, shall use commercially reasonable efforts to negotiate and cause TDS USA (and, in the case of the ValueLink Agreement, as applicable as determined by DEI in its sole discretion, TDS Canada) to enter into (i) a Monogram Participation Agreement in the manner contemplated by Section 6.9.2, and/or (ii) a ValueLink Participation Agreement in the manner contemplated by Section 6.10.3, in the case of each of subparagraphs (i) and (ii), unless and until it becomes evident, in DEI's business judgment, that execution of such agreement is not reasonably practicable without undue cost or delay.

7.6 Insurance. Buyer acknowledges and agrees that, as of the Closing Date, DEI, Seller and their Affiliates will terminate the coverage under all insurance policies and bonds applicable to the Company, the Business and/or any Employees prior to the Closing, other than any such insurance policy as to which the insurer is an unrelated third party (i.e., not DEI or an Affiliate of DEI) and as to which there are no insured parties other than the Company. After the Closing Date, the Company will not have, and DEI and Seller will indemnify the Company and Buyer against, any obligations under any such insurance policies and bonds that have been terminated. Following the Closing, Buyer shall be solely responsible for providing all insurance coverage for the Company and the Business, including to the extent required under the provisions of the License and Conduct of Business Agreement.

7.7 Corporate Headquarters. DEI and Seller agree that they shall use their commercially reasonable efforts (other than the expenditure of money or, except as determined by DEI or Seller in its respective sole discretion, the amendment or modification of the Corporate Headquarters Lease) to assign TDS USA's obligations under the Corporate Headquarters Lease to DEI or one of its Affiliates (other than the Company) and to terminate the storage license for the related storage space prior to the Closing. If DEI and Seller are unable to so assign such obligations prior to the Closing, except as set forth in the Transitional Administrative Services Agreement (pursuant to which DEI or its Affiliates may grant the Company the right to occupy all or part of the Corporate Headquarters subject to and in accordance with the terms of such agreement) (a) DEI and Seller shall be solely responsible for, and shall indemnify and hold harmless the Company against, all obligations of the "Tenant" under the Corporate Headquarters Lease and (b) DEI and Seller shall provide a copy of the Corporate Headquarters Lease to Buyer.

7.8 Non-IT Intellectual Property; Disney Information Technology. Buyer acknowledges and agrees that (a) as of the Closing, neither the Non-IT Intellectual Property nor the Disney Information Technology nor any rights thereto will be owned, licensed or controlled by the Company, (b) neither the Non-IT Intellectual Property nor the Disney Information Technology nor any rights thereto will be Transferred to Buyer in connection with the Membership Unit Acquisition or the Share Acquisition, and (c) effective as of the Closing Date, DEI, Seller and their Affiliates expect to, and may, terminate all existing arrangements with respect to the Company's use of the Non-IT Intellectual Property and the Disney Information Technology without any liability to DEI, Seller or their Affiliates and without payment to the Company. Accordingly, from and after the Closing Date, none of the Non-IT Intellectual Property or Disney Information Technology will be available to the Company except and only to the extent (if at all) provided under the License and Conduct of Business Agreement and the Transitional Information Technology Services Agreement, respectively. Notwithstanding the foregoing, the parties agree and acknowledge that (i) with respect to Disney Information Technology that as of the date hereof is held by TDS USA or TDS Canada, DEI and Seller shall use (or, as applicable, shall cause their Affiliates to use) their commercially reasonable efforts to obtain any Consents necessary for the Transfer of such Disney Information Technology and to Transfer prior to the Closing to DEI or one of its Affiliates (other than the Company) such Disney Information Technology, and (ii) to the extent that notwithstanding DEI's and Seller's use of commercially reasonable efforts to Transfer (or cause to be Transferred) such Disney Information Technology to DEI or one of its Affiliates (other than the Company), such Disney Information Technology cannot be Transferred to DEI or one of its Affiliates (other than the Company), as determined by DEI in its sole discretion, whether as a result of the failure to obtain a Consent to Transfer or otherwise, then such Disney Information Technology shall be deemed to be "Company Information Technology" for all purposes hereunder.

7.9 Transitional Services. Buyer acknowledges and agrees that all Intercompany Agreements and Arrangements will be terminated prior to the Closing pursuant to, and to the extent set forth in, Section 2.1.4 without any liability to DEI, Seller or their Affiliates and without payment to the Company. Accordingly, from and after the Closing Date, none of DEI, Seller or their Affiliates will provide any administrative, support or other services (including, without limitation, payroll, product sourcing, supply chain, distribution, employee benefits, legal, accounting, treasury and tax planning services) to the Company except and only to the extent provided under Section 6.11.3 or under the Transitional Administrative Services Agreement or the Transitional Distribution Services Agreement.

7.10 Management and Operation of Disney Retained Stores.

7.10.1 Management by Buyer. From and after the Closing Date, Buyer shall (a) operate the Deferred Stores (including any Approved Deferred Stores) until the Subsequent Closing Date or, if no Subsequent Closing occurs, until expiration of the Subsequent Closing Period, and (b) operate the Disney Retained Stores (other than the Flagship Stores) until expiration or

termination of the Transitional Disney Retained Stores Agreement, in each case as provided under the Transitional Disney Retained Stores Agreement.

7.10.2 Closing of Deferred Stores and Disney Retained Stores. From and after the Closing Date, DEI and Seller shall have the right to close and cease operations at any Deferred Stores (subject to the provisions of Section 6.7.3(b)) and/or Disney Retained Stores. The closure of and cessation of operations at any such Store shall be conducted by the Company under the Transitional Disney Retained Stores Agreement in a commercially reasonable time and manner and in accordance with such reasonable instructions as DEI and/or its Affiliates shall specify. Buyer shall, and shall cause TDS USA and/or TDS Canada to, cooperate and comply with all such instructions in connection with such closure of and cessation of operations at any such Store.

7.11 Actions by Canadian Competition Bureau. Buyer acknowledges and agrees that DEI, Seller and their Affiliates shall not be liable in any manner or have any obligation whatsoever, and that Buyer and its Affiliates shall not be entitled to indemnification or contribution from, or seek or exercise any other remedy against, DEI, Seller or any of their Affiliates, in each case with respect to any notice, determination or Action by the Canadian Competition Bureau challenging the transactions contemplated by this Agreement, except to the extent that any information provided by DEI, Seller and their Affiliates either (i) for delivery to the Canadian Competition Bureau or (ii) that included financial information about TDS Canada in support of the conclusion stated in Section 6.8.3, contains any material error or omission that results directly in liability to Buyer or its Affiliates under the Competition Act.

7.12 Post-Closing Audit-Related Information. Following the Closing, upon reasonable notice from the Company to DEI and to the extent reasonably requested by Buyer or the Company, DEI and Seller will, within a reasonable period of time following the Company's request (and, with respect to the information described in subparagraph (i), not later than thirty (30) days after the Closing Date, with DEI and Seller acknowledging that such information in subparagraph (i) has already been requested by Buyer), (i) provide pro forma adjustments to the TDS Audited Financial Statements (along with such supporting documentation for such pro forma adjustments as may be reasonably requested by Buyer or the Company and readily available to DEI and Seller without additional diligence or expenditure of money) to reflect the deletion of the Retained Assets and the Retained Liabilities from such TDS Audited Financial Statements for the periods and as of the dates of such financial statements, (ii) provide (to the extent that such financial information has not already been provided pursuant to Section 6.2.1) combined, unaudited quarterly financial information of TDS USA and TDS Canada for the most recently completed four (4) fiscal quarters prior to the Closing Date, prepared in accordance with Modified GAAP, (iii) provide (to the extent that such financial information has not already been provided pursuant to Section 6.2.1) combined, unaudited monthly financial information of TDS USA and TDS Canada for each fiscal month included in the most recently completed fiscal year prior to the Closing Date (provided, that for purposes of clarification, such information referenced in this subparagraph (iii) shall not necessarily be prepared in accordance with GAAP or Modified GAAP and no representations or warranties shall be made, or deemed to be made, with respect to such information by or through the provision thereof), (iv) provide reasonable cooperation to Buyer and the Company in connection with the audit (including, without limitation, providing any management representation letters necessary for such audit with respect to any fiscal period ending on or prior to the Closing Date) of the combined balance sheets and the related combined statements of operations and retained earnings and cash flows of TDS USA and TDS Canada as of and for any periods beginning on or after October 1, 2003 and ending on or prior to the Closing Date, provided, that, Buyer or the Company (as applicable) shall have engaged PWC to conduct the audit of such financial statements and pays for all of the costs and expenses associated therewith, (v) authorize and request PWC to provide its consent to the filing of the TDS Audited Financial Statements (and any other financial statements audited by PWC and described in subparagraph (iv) of this Section 7.12) with the SEC to the extent required in connection with any filings with the SEC by the Company, TCP or their respective Affiliates in accordance with applicable Law and to issue a comfort letter or comparable instrument to the Company and its underwriters or investment bankers with respect to the TDS Audited Financial Statements (and any other financial statements audited by PWC and described in subparagraph (iv) of this Section 7.12) in connection with any offering of securities of the Company, TCP or their respective Affiliates not prohibited by the terms of the License and Conduct of Business Agreement, and (vi) authorize and request PWC to make available to Buyer and the Company all audit workpapers relating to the TDS Audited Financial Statements (and any other financial statements audited by PWC and described in subparagraph (iv) of this Section 7.12), provided that such audit workpapers will be made available to Buyer and the Company for review purposes only and Buyer and the Company shall not be permitted to make copies of such workpapers (except to the extent permitted by PWC in accordance with its customary business practices).

7.13 Initial Equity Capital Investment. On the Closing Date, immediately following the consummation of the Membership Unit Acquisition and the Share Acquisition, Buyer shall, or shall cause TCP to, invest Fifty Million Dollars ($50,000,000) of equity capital in TDS USA in the form of cash or cash equivalents, representing the first half of the commitment of One Hundred Million Dollars ($100,000,000) contemplated by the TCP Guaranty and Commitment.

## ARTICLE VIII
## CONDITIONS OF ACQUISITION

8.1 General Conditions. The obligations of the parties to effect the Closing shall be subject to the following conditions unless waived in writing by the parties:

8.1.1 Legal Proceedings. No Law shall have been enacted, entered, issued, promulgated or enforced by any Governmental Entity that prohibits or restricts or would (if successful) prohibit or restrict the transactions contemplated by this Agreement. No Governmental Entity shall have notified any party to this Agreement that consummation of the transactions contemplated by this Agreement would constitute a violation of any Law of any jurisdiction and/or that it intends to commence

proceedings to restrain or prohibit such transactions or force divestiture or rescission, unless such Governmental Entity shall have withdrawn such notice and abandoned any such proceedings prior to the time that otherwise would have been the Closing Date.

8.1.2 Permits. With respect to the transactions contemplated by this Agreement, (i) any applicable waiting period under the Hart-Scott-Rodino Act shall have expired or been terminated, and (ii) all Permits required to be obtained from any Governmental Entity (including, without limitation, any required approval under the Investment Canada Act) shall have been received or obtained.

8.2 Conditions to Obligations of Buyer. The obligations of Buyer to effect the Closing shall be subject to the following conditions, except to the extent waived in writing by Buyer:

8.2.1 Representations, Warranties and Covenants of DEI and Seller. (a) Except as would not constitute a Material Adverse Event, the representations and warranties of DEI and Seller herein contained shall be true and correct at the Closing Date with the same effect as though made at such time (except (i) that any representation or warranty of DEI and Seller contained herein that is already qualified by "materiality" or "Material Adverse Event" shall be deemed not to be so qualified for purposes of this Section 8.2.1, so that there will be no duplication between such qualifier contained within such representation or warranty and the "Material Adverse Event" qualifier contained in this subparagraph (a), (ii) for changes resulting from actions not prohibited under or that have been approved by Buyer in accordance with Section 6.3 and (iii) that any representation or warranty expressly made as of a particular date shall remain true and correct as of such date); (b) DEI and Seller shall have complied in all material respects with all covenants and conditions required by this Agreement to be complied with by them at or prior to the Closing Date; and (c) DEI and Seller shall have delivered to Buyer a certificate of DEI and Seller in form and substance reasonably satisfactory to Buyer, dated the Closing Date and signed by duly authorized officers of DEI and Seller, respectively, to the effect of the preceding subparagraphs (a) and (b).

8.2.2 Minimum Number of Core Store Consents. The requisite Consents for Consent Required Core Stores having Lease Liabilities representing, in the aggregate, at least eighty-five percent (85%) of the Aggregate Lease Liability shall have been obtained.

8.2.3 Related Agreements. Buyer shall have received the License and Conduct of Business Agreement, duly executed by DEI or the Affiliates of DEI who are parties thereto.

8.2.4 TDS Audited Financial Statements. Buyer shall have received the TDS Audited Financial Statements.

8.2.5 Legal Opinion of Counsel for DEI and Seller. Buyer shall have received legal opinions of counsel for DEI and Seller, Irell & Manella LLP and McCarthy Tétrault LLP, addressed to Buyer, in substantially the forms attached hereto as Annex E-1 and Annex E-2, respectively.

8.2.6 Good Standing Certificates. Buyer shall have received certificates of good standing (or with respect to TDS Canada, a certificate of status) from the jurisdiction of incorporation or organization (as applicable) of, and with respect to, Seller, DEI, TDS USA and TDS Canada.

8.3 Conditions to Obligations of DEI and Seller. The obligations of DEI and Seller to effect the Closing shall be subject to the following conditions, except to the extent waived in writing by DEI and Seller:

8.3.1 Representations, Warranties and Covenants of Buyer. (a) The representations and warranties of Buyer herein contained shall be true and correct in all material respects at the Closing Date with the same effect as though made at such time (except (i) that any representation or warranty of Buyer contained herein that is already qualified by "materiality" shall be deemed not to be so qualified for purposes of this Section 8.3.1, so that there will be no duplication between such qualifier contained within such representation or warranty and the "in all material respects" qualifier contained in this subparagraph (a) and (ii) that any representation or warranty expressly made as of a particular date shall remain true and correct as of such date); (b) Buyer shall have complied in all material respects with all covenants and conditions required by this Agreement to be complied with by it at or prior to the Closing Date; and (c) Buyer shall have delivered to DEI and Seller a certificate of Buyer in form and substance reasonably satisfactory to DEI and Seller, dated the Closing Date and signed by a duly authorized officer of Buyer, to the effect of the preceding subparagraphs (a) and (b).

8.3.2 Minimum Number of Core Store Consents. The requisite Consents for Consent Required Core Stores having Lease Liabilities representing, in the aggregate, at least eighty-five percent (85%) of the Aggregate Lease Liability shall have been obtained; provided, that, if the foregoing minimum requirement has been satisfied and the Closing occurs prior to November 30, 2004 but there remain one (1) or more Deferred Leases with respect to which the parties will attempt to obtain Consents to Transfer during the Subsequent Closing Period and the Subsequent Closing occurs with respect to such Approved Deferred Lease, then Buyer agrees that it shall defend, indemnify and hold DEI, Seller, their respective Affiliates and the officers, directors, agents, representatives, employees, successors and assigns of DEI, Seller and their respective Affiliates, forever harmless from and against any and all Loss arising from and after the date of the Subsequent Closing imposed on, incurred or suffered by or asserted against any such indemnified Person arising directly or indirectly from, out of or based on any Approved Deferred Lease for which the Consent to Transfer was obtained after the Closing Date but on or prior to November 30, 2004, and such indemnification obligation shall survive indefinitely.

8.3.3 Approval of Buyer's Capitalization, Financing, Liquidity and Governing Documents. DEI and Seller shall have received and approved Buyer's Closing Capitalization Table, Buyer's Liquidity Plan and Buyer's Governing Documents, if required

pursuant to Sections 6.4.1, 6.4.2 and 6.4.3.

8.3.4 Retained Asset Agreements. TDS USA and TDS Canada, as applicable, shall have distributed to Seller in connection with the LLC Distribution, Transferred to Canadian Transferee in connection with the Canadian Transfer or assigned to DEI or its Affiliates (other than the Company) each of the Retained Asset Agreements and shall have obtained all Consents of third parties necessary in connection therewith.

8.3.5 Related Agreements and Other Documents. DEI and Seller shall have received the License and Conduct of Business Agreement, the TCP Guaranty and Commitment and the TCP Intercompany Services Agreement, each duly executed by the Company, TCP, Buyer or the Affiliates of Buyer who are parties thereto (including, in the case of the TCP Guaranty and Commitment, those Affiliates of Buyer who become Obligors).

8.3.6 Independent Directors. There shall be two (2) Persons meeting the requirements of "Independent Directors" pursuant to Section 6.17 who have been selected by DEI, Seller and Buyer in accordance with Section 6.17 and with respect to which DEI and Seller shall have received (from such Persons in the case of the following subparagraphs (i) and (ii) and from Buyer in the case of the following subparagraphs (iii) and (iv)) evidence satisfactory to DEI and Seller in their respective business judgment that (i) with respect to Buyer, TDS USA (or, as applicable, New TDS LLC) and each of their respective Subsidiaries (other than TDS Canada), such Persons have agreed and, on the Closing Date immediately following the consummation of the Membership Unit Acquisition and the Share Acquisition, are prepared to serve as directors (or in a comparable capacity in the case of any limited liability company or other Entity) of such Entities, (ii) with respect to TDS Canada (or, as applicable, its successor), such Persons have agreed and are prepared to serve as directors of TDS Canada within twenty (20) Business Days following the Closing Date (or, if and only if the Canada Reincorporation is delayed beyond the twentieth (20th) Business Day following the Closing as a result of an action taken, or failed to be taken, in error on or prior to the Closing by DEI or its Affiliates and having the effect specifically described in the first sentence of Section 2.6.2, then on the Canada Reincorporation Date), (iii) on the Closing Date immediately following the consummation of the Membership Unit Acquisition and the Share Acquisition, Buyer, TDS USA, New TDS LLC and each of their respective Subsidiaries (other than TDS Canada) are prepared to elect such Persons as directors (or to comparable positions in the case of any limited liability company or other Entity) and (iv) within twenty (20) Business Days after the Closing Date (or, if and only if the Canada Reincorporation is delayed beyond the twentieth (20th) Business Day following the Closing as a result of an action taken, or failed to be taken, in error on or prior to the Closing by DEI or its Affiliates and having the effect specifically described in the first sentence of Section 2.6.2, then on the Canada Reincorporation Date) TDS Canada (or, as applicable, its successor) will be prepared to elect such Persons as directors (or to comparable positions in the case of any limited liability company or other Entity).

8.3.7 Initial Equity Capital Investment. Buyer shall have delivered to DEI and Seller evidence satisfactory to DEI and Seller in their respective business judgment that, on the Closing Date, immediately following the consummation of the Membership Unit Acquisition and the Share Acquisition, Buyer or TCP will be in a position to make a Fifty Million Dollar ($50,000,000) investment of equity capital in TDS USA in the form of cash or cash equivalents pursuant to Section 7.13 of this Agreement and as contemplated by the TCP Guaranty and Commitment.

8.3.8 Solvency Opinion. DEI and Seller shall have received an opinion satisfactory to DEI and Seller in their respective business judgment regarding the solvency of TDS USA following the consummation of the transactions contemplated by this Agreement pursuant to Section 6.12.

8.3.9 WARN Act Compliance. With respect to the employees of the Company whose employment will be terminated by the Company on or prior to the Closing in connection with or as a result of the transactions contemplated hereby, the requirements of the Worker Adjustment and Retraining Notification Act shall have been satisfied as determined by DEI and Seller in their respective business judgment, including, without limitation, the giving of all required notices and the expiration and tolling of all applicable notice periods thereunder.

8.3.10 Capitalization of TCP. As of the Closing Date, (i) no Disqualified Person who is the Largest TCP Stockholder or the Largest TCP Affiliate Stockholder shall own, beneficially or of record, more than nineteen percent (19%) of any tranche of outstanding voting TCP Securities or outstanding voting TCP Affiliate Securities; (ii) no Disqualified Person who is not the Largest TCP Stockholder or the Largest TCP Affiliate Stockholder shall own, beneficially or of record, more than twenty-five percent (25%) of any tranche of outstanding voting TCP Securities or outstanding voting TCP Affiliate Securities; and (iii) Disqualified Persons, taken together in the aggregate, without regard to whether any such Disqualified Person is or is not the Largest TCP Stockholder or the Largest TCP Affiliate Stockholder, shall not own, beneficially or of record, more than thirty-three percent (33%) of any tranche of outstanding voting TCP Securities or outstanding voting TCP Affiliate Securities.

8.3.11 Virginia Franchise Qualification. DEI and Seller shall have received written notice from the applicable Governmental Entity that TDS Franchising has been qualified to grant a franchise of the Business under the applicable franchise regulations of the State of Virginia.

8.3.12 Legal Opinion of Buyer's Counsel. DEI and Seller shall have received legal opinions of Buyer's counsel, Stroock & Stroock & Lavan LLP and Stikeman Elliot LLP, addressed to DEI and Seller, in substantially the forms attached hereto as Annex F-1 and Annex F-2, respectively.

8.3.13 Good Standing Certificates. DEI and Seller shall have received certificates of good standing from the jurisdiction of incorporation or organization (as applicable) of, and with respect to, USA Purchaser and Canadian Purchaser.

## ARTICLE IX
## TERMINATION

9.1 Termination of Agreement. This Agreement may be terminated at any time before the Closing as follows and in no other manner:

9.1.1 Mutual Consent. By mutual consent in writing of Buyer, on the one hand, and DEI and Seller, on the other hand.

9.1.2 Conditions to Buyer's Performance Not Met. By Buyer by written notice to DEI and Seller if any event occurs that would render impossible the satisfaction, on or before the Termination Date, of one or more conditions to the obligations of Buyer to consummate the transactions contemplated by this Agreement as set forth in Section 8.1 or 8.2; provided, that the right to terminate this Agreement under this Section 9.1.2 shall not be available to Buyer if Buyer's actions or omissions resulted in such impossibility and Buyer's actions or omissions constitute a material breach of this Agreement.

9.1.3 Conditions to DEI's and Seller's Performance Not Met. By DEI and Seller by written notice to Buyer if any event occurs that would render impossible the satisfaction, on or before the Termination Date, of one or more conditions to the obligations of DEI or Seller to consummate the transactions contemplated by this Agreement as set forth in Section 8.1 or 8.3; provided, that the right to terminate this Agreement under this Section 9.1.3 shall not be available to DEI or Seller if the actions or omissions of DEI or Seller resulted in such impossibility and the actions or omissions of DEI or Seller constitute a material breach of this Agreement.

9.1.4 Material Breach. By (i) Buyer if (A) it has not breached any of its representations, warranties or covenants under this Agreement in any material respect and (B) there has been a breach on the part of DEI or Seller in any of its representations or warranties set forth herein in a manner that would constitute a Material Adverse Event (except that any representation or warranty of DEI or Seller contained herein that is already qualified by "materiality" or "Material Adverse Event" shall be deemed not to be so qualified for purposes of this Section 9.1.4(i)(B), so that there will be no duplication between such qualifier contained within such representation or warranty and the "Material Adverse Event" qualifier set forth in this Section 9.1.4(i)(B)) or a breach on the part of DEI or Seller in any of its covenants set forth herein in any material respect, in either case that has not been cured within twenty (20) Business Days after receipt by DEI and/or Seller of notice (including a reasonably detailed description of such breach) from Buyer of an intention to terminate if such breach continues, or (ii) DEI and Seller if (X) they have not breached any of their representations or warranties under this Agreement in a manner constituting a Material Adverse Event (except that any representation or warranty of DEI or Seller contained herein that is already qualified by "materiality" or "Material Adverse Event" shall be deemed not to be so qualified for purposes of this Section 9.1.4(ii)(X), so that there will be no duplication between such qualifier contained within such representation or warranty and the "Material Adverse Event" qualifier set forth in this Section 9.1.4(ii)(X)) and they have not breached any of their covenants under this Agreement in any material respect and (Y) there has been a breach on the part of Buyer in any of its representations or warranties set forth herein in any material respect (except that any representation or warranty of Buyer contained herein that is already qualified by "materiality" shall be deemed not to be so qualified for purposes of this Section 9.1.4(ii)(Y), so that there will be no duplication between such qualifier contained within such representation or warranty and the "in any material respect" qualifier set forth in this Section 9.1.4(ii)(Y)) or a breach on the part of Buyer in any of its covenants set forth herein in any material respect, in either case that has not been cured within twenty (20) Business Days after receipt by USA Purchaser and/or Canadian Purchaser of notice (including a reasonably detailed description of such breach) from DEI or Seller of an intention to terminate if such breach continues.

9.1.5 Outside Date. By DEI and Seller, on the one hand, or Buyer, on the other hand, if the Closing has not occurred by February 15, 2005 (the **"Termination Date"**); provided, that the right to terminate this Agreement under this Section 9.1.5 shall not be available to either such party if its actions or omissions resulted in the failure of the Membership Unit Acquisition or the Share Acquisition to occur on or before the Termination Date and such actions or omissions constitute a material breach of this Agreement.

9.1.6 Superior Proposal. By DEI or Seller, if, prior to the Closing, DEI, Seller or their Affiliates enter into a definitive agreement for a Superior Proposal under Section 6.14; provided, that, in such instance, DEI and Seller shall pay to Buyer, within five (5) Business Days following the date on which DEI or Seller enters into such agreement, by wire transfer of immediately available funds to such account as Buyer shall designate in writing to DEI and Seller, an amount equal to Twenty Million Dollars ($20,000,000), plus the reasonable and documented out-of-pocket expenses (including, without limitation, legal, accounting, investment banking, consulting, travel and other reasonable and documented out-of-pocket expenses) of Buyer and its Affiliates incurred directly as a result of the negotiation and preparation of this Agreement and the transactions contemplated hereby.

9.2 Effect of Termination.

9.2.1 If this Agreement is terminated under any provision of Section 9.1, all further obligations of the parties under this Agreement shall terminate; provided, that no termination of this Agreement shall relieve any party of any liability for a breach of this Agreement or be deemed to constitute a waiver of any available right or remedy for any such breach.

9.2.2 Notwithstanding anything to the contrary contained herein, the provisions of this Article IX and Article XI (other than Sections 11.3 and 11.8 thereof), shall be deemed to survive such termination of this Agreement.

## ARTICLE X
## INDEMNIFICATION

10.1 Survival. The representations and warranties of each party will survive the Closing but will expire at 5:00 p.m. Los Angeles time on April 30, 2006; provided, that the Fundamental Representations other than the representations and warranties set forth in Section 4.4 will survive the Closing indefinitely and the representations and warranties set forth in Section 4.4 will survive the Closing until the earlier to occur of the expiration of any statute of limitations applicable thereto (or, in the case of TDS Canada, the expiration of any period during which a recognized document assessing liability for Tax may be issued by a Governmental Entity) and the final determination of any Tax matter referred to therein, provided, that, without the prior written consent of DEI in its sole discretion, Buyer shall not cause or permit the Company to provide, and the Company shall not provide, any Governmental Entity any waiver or extension of such time in respect of such period. Except as otherwise provided in this Agreement, all covenants, agreements and indemnities set forth in this Agreement shall survive the Closing indefinitely. No party will be responsible with respect to any Loss or indemnification with respect to any breach of such party's representations, warranties or covenants unless such party receives notice of the Loss or a potential Loss with respect to such breach before such representation, warranty or covenant expires in accordance with this Section 10.1. With respect to any such Loss as to which notice is received before the expiration of a particular representation, warranty or covenant, the party responsible for such representation, warranty or covenant will remain responsible for indemnification notwithstanding the subsequent expiration of such representation, warranty or covenant.

10.2 Indemnification.

10.2.1 General Indemnity by DEI and Seller in Favor of Buyer. Subject to Sections 10.4 and 10.5, DEI and Seller, jointly and severally, shall defend, indemnify and hold Buyer and each of its Affiliates and the officers, directors, agents, representatives, employees, successors and assigns of each, forever harmless from and against any and all Loss imposed on, incurred or suffered by or asserted against the Persons hereby required to be indemnified (but not against any of the same to the extent that a Buyer Disqualifying Event was the cause of such Loss) arising directly or indirectly from, out of or based on (i) any breach of any representation or warranty made by DEI or Seller in Article IV, (ii) any failure by DEI or Seller to perform any covenant of DEI or Seller, respectively, set forth in this Agreement, including, without limitation, any indemnification obligations under Sections 6.7.1(d), 7.4.1, 7.5 and 7.7, (iii) any liability arising under or relating to the Retained Assets and the Retained Asset Agreements (except to the extent of Buyer's indemnification obligation under Section 7.5.1(b)(iii)), (iv) any liability arising under or relating to the U.K. Lease Guarantees, (v) the Indemnified Actions, (vi) any liability arising under or relating to the lease for any Store closed by the Company at any time prior to the Closing Date, (vii) any escheat liability of the Company under state unclaimed property laws with respect to matters arising prior the Closing (including, without limitation, sales of gift certificates and other transactions occurring prior to the Closing, regardless of when the obligation to file an unclaimed property report arises), (viii) any liability (A) relating to any employee or former employee of the Company that is not a Continuing Employee or (B) arising under or relating to any Employee Benefit Plan (including, without limitation, any Company Plans) sponsored or maintained by DEI or its ERISA Affiliates, or to which DEI or its ERISA Affiliates are obligated to contribute, with respect to service of employees of the Company performed before the Closing Date for the Company or for DEI or its ERISA Affiliates, (ix) the Supplemental Disclosure Items, (x) ** and (xi) any Actions asserted against either TDS USA or TDS Canada that arise directly from and relate solely to the incident reports set forth on TDS Schedule 10.2.1.

---

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

10.2.2 Tax Indemnity by DEI and Seller in Favor of Buyer. In addition to (but not in duplication of) the indemnification provided for in Section 10.2.1, each of DEI and Seller shall jointly and severally indemnify the Company and Buyer and hold them harmless from and against any Loss attributable to (i) Taxes (or the non-payment thereof) of or relating to the Company or its income, operations or assets for all taxable periods ending on or before the Closing Date, (ii) the portion allocable to the period through the Closing Date of any Taxes of or relating to the Company, its income, operations or assets for any taxable period that includes, but does not end on, the Closing Date, (iii) any liability of the Company under Treasury Regulations § 1.1502-6 (or any similar provision of state, local or foreign law) for income taxes of any entity other than the Company and (iv) Taxes of any Person (other than the Company) imposed on the Company as a transferee or successor, by contract or pursuant to any law, rule or regulation, which Taxes relate to an event or transaction occurring before the Closing.

10.2.3 Employee Benefits Indemnity by DEI and Seller in Favor of Buyer. In addition to (but not in duplication of) the indemnification provided for in Section 10.2.1, each of DEI and Seller shall jointly and severally indemnify the Company and Buyer and hold them harmless from and against any Loss arising under or relating to any Employee Benefit Plan sponsored or maintained by DEI or its ERISA Affiliates, or to which DEI or its ERISA Affiliates are obligated to contribute, with respect to the participation in such Employee Benefit Plan (or actual or alleged improper failure to participate in such Employee Benefit Plan) of any individual other than an individual who is, or ever was, an Employee.

10.2.4 General Indemnity by Buyer in Favor of DEI and Seller. Subject to Sections 10.4 and 10.5, Buyer shall defend, indemnify and hold DEI, Seller and each of their Affiliates and the officers, directors, agents, representatives, employees, successors and assigns of each, forever harmless from and against any and all Loss imposed on, incurred or suffered by or asserted against the Persons hereby required to be indemnified (but not against any of the same to the extent that a Seller Disqualifying Event was the cause of such Loss) arising directly or indirectly from, out of or based on (i) any breach of any representation or warranty made by Buyer in Article V, (ii) any failure by Buyer to perform any covenant of Buyer set forth in this Agreement, including, without limitation, any indemnification obligations under Sections 6.1, 6.2.3(c)(iii), 6.11.2, 6.11.8, 6.11.12, 7.5 and 8.3.2, (iii) any liability arising under or relating to any notice, determination or Action by the Canadian Competition Bureau challenging the transactions contemplated by this Agreement (other than liability covered by the exception in Section 7.11) and (iv) from and

after the Subsequent Closing Date, the Approved Deferred Leases, the Approved Deferred Stores and the Store-Related Assets and Liabilities.

10.3 Indemnification Procedure. The indemnification obligations under this Agreement will be subject to the following procedures:

10.3.1 Either party seeking indemnification under this Agreement (the **"Indemnified Party"**) shall give notice to the party required to provide indemnification hereunder (the **"Indemnifying Party"**) promptly after the Indemnified Party has actual knowledge of any claim as to which indemnity may be sought hereunder, and the Indemnified Party shall permit the Indemnifying Party (at the expense of the Indemnifying Party), if it acknowledges in writing its liability with respect to defense costs, to assume the defense of any claim or litigation resulting therefrom; provided, that: (i) no such notice shall be required with respect to the Actions listed on Schedule 4.9; (ii) the Indemnified Party may participate in such defense, represented by counsel of the Indemnified Party's own choosing, but only at the Indemnified Party's own cost and expense, except with respect to any claim or litigation by or with a Governmental Entity involving or relating to any Tax matter; and (iii) the omission by the Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent that such omission results in a failure of actual notice to the Indemnifying Party and the Indemnifying Party is actually prejudiced or damaged as a result of such failure to give notice.

10.3.2 The Indemnifying Party shall not, except with the written consent of the Indemnified Party, consent to entry of any judgment or administrative order or enter into any settlement or a compromise that would bind the Indemnified Party if such judgment, administrative order, settlement or compromise (i) does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Party of a release from all liability with respect to such claim or litigation or (ii) would require any admission of wrongdoing on the part of the Indemnified Party.

10.3.3 In the event that the Indemnifying Party does not acknowledge in writing its indemnification obligation hereunder and accept the defense of any matter as above provided within ten (10) Business Days following the receipt of written notice of the Indemnified Party of any such matter, the Indemnified Party, without waiving any rights under this Article X, shall have the full right to defend against any such claim or litigation at the reasonable expense of the Indemnifying Party.

10.3.4 The amount of any indemnification payable by the Indemnifying Party to the Indemnified Party under this Article X will be reduced by (i) any insurance proceeds received by the Indemnified Party in connection with or related to the Loss or the circumstances giving rise to the Loss, (ii) any Tax credit, deduction, reduction or other comparable benefit accruing to or arising in favor of the Indemnified Party in accordance with GAAP that results from the Loss, and (iii) in the event Buyer is the Indemnified Party, the amount of any accrual or other liability (contingent or otherwise) reflected as a Current Liability on the Final Closing Balance Sheet and/or the Final Subsequent Closing Balance Sheet that relates to the Loss or the circumstances giving rise to the Loss.

10.4 Basket. DEI and Seller, on the one hand, and Buyer, on the other hand, shall not be liable for any Loss with respect to any breach of its respective Operational Representations (except any Loss resulting directly from the Supplemental Disclosure Items covered by Section 10.2.1(ix)) arising from a claim from a third party (collectively, **"Third Party Claims"**) or from a direct claim by one party against the other (collectively, **"Direct Claims"**), until the aggregate amount of all such Third Party Claims and Direct Claims arising from breaches of its respective Operational Representations for which such party would otherwise be responsible exceeds One Million Dollars ($1,000,000) (the **"Basket"**). If the aggregate amount of such Third Party Claims and Direct Claims arising from breaches of its respective Operational Representations for which DEI and Seller, on the one hand, or Buyer, on the other hand, is responsible exceeds the Basket, then DEI and Seller, on the one hand, or Buyer, on the other hand, will be responsible only for the amount of such Third Party Claims and Direct Claims that exceeds the Basket.

10.5 Maximum Liability. DEI and Seller, on the one hand, and Buyer, on the other hand, shall not be liable for any Third Party Claims or Direct Claims arising from breaches of its respective Operational Representations (except any Loss resulting directly from the Supplemental Disclosure Items covered by Section 10.2.1(ix)) to the extent that the aggregate amount of all such Third Party Claims and Direct Claims against such party exceeds Twenty Million Dollars ($20,000,000).

## ARTICLE XI
## GENERAL

11.1 Entire Agreement. The provisions contained herein (including any annexes, schedules and documents attached hereto or delivered herewith), in the Related Agreements and/or in any other letter agreement entered into in order to facilitate, but not to consummate, the transactions contemplated by this Agreement, constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede and replace any and all previous agreements among the parties, whether written or oral, with respect to such subject matter. No statement or inducement with respect to the subject matter hereof by any party hereto or by any agent or representative of any party hereto that is not contained in this Agreement shall be valid or binding among the parties.

11.2 Annexes and Schedules. The annexes and schedules to this Agreement, as designated herein and attached hereto or delivered separately under the terms hereof (including the TDS Schedules and the Buyer Schedules), shall each be deemed to form an integral part of this Agreement and to be incorporated herein as if herein set out in full. Capitalized terms used in the annexes and schedules (including the TDS Schedules and the Buyer Schedules) and not otherwise defined therein shall have the respective meanings ascribed to them in this Agreement. The inclusion of any information in any TDS Schedules shall not be deemed to be an

admission or acknowledgment by any party that such information is required to be listed on such TDS Schedules or is material to or outside the ordinary course of the business of the Company.

11.3 Further Assurances. Each party will use its commercially reasonable efforts to cause all conditions to its obligations hereunder to be timely satisfied and to perform and fulfill all obligations on its part to be performed and fulfilled under this Agreement, to the end that the transactions contemplated by this Agreement shall be effected substantially in accordance with its terms as reasonably practicable.

11.4 Amendments. Except as otherwise provided herein, no provision of this Agreement may be modified, supplemented, or amended except by a written instrument duly executed by each of the parties hereto. Any such modifications, supplements or amendments shall not require additional consideration to be effective.

11.5 No Assignment. Neither this Agreement nor any rights or obligations under it are Transferable (directly, indirectly, by operation of law, change of control (e.g., merger, consolidation, amalgamation, stock (or share) sale, sale of substantially all assets), pledge, hypothecation or otherwise) by either party without the prior written consent of the other party, which consent may be granted or withheld in each party's sole discretion.

11.6 Effect of Headings. The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants or conditions of this Agreement in any manner.

11.7 Counterparts; Facsimile Signatures. This Agreement and any other agreement or document delivered hereunder may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures to this Agreement and any other agreement or document delivered hereunder shall be effective.

11.8 Publicity and Reports. DEI, Seller and Buyer shall coordinate all publicity relating to the transactions contemplated by this Agreement, and no party shall issue, or permit its Affiliates to issue, any press release, publicity statement or other public notice relating to this Agreement, or the transactions contemplated by this Agreement, without obtaining the prior written consent of the other party; provided, that nothing herein will prohibit either party from issuing or causing publication of any press release, publicity statement or other public notice to the extent that such action is required by, or is determined to be advisable by such party in its business judgment under, applicable Law or the regulations of any securities exchange, securities trading system or similar regulatory body applicable to such party or its Affiliates.

11.9 Confidentiality. Except as otherwise required by any applicable Law or any regulation of any securities exchange, securities trading system or similar regulatory body, Buyer, on the one hand, and DEI and Seller, on the other hand, agree not to disclose to any third party (other than to their Affiliates and their and their Affiliates' Representatives on a need-to-know basis only) or permit any third party to disclose or use (other than the right of DEI, Seller or Buyer or their Affiliates or their and their Affiliates' respective Representatives to use for purposes of this Agreement and the Related Agreements) any non-public, confidential or proprietary information (the **"Confidential Information"**) that either party or its Affiliates or any of its or its Affiliates' Representatives makes available to the other party or its Affiliates or any of its or its Affiliates' Representatives in connection with this Agreement, including any Confidential Information disclosed by one party to the other party in connection with this Agreement at any time prior to the date hereof. Each of Buyer, on the one hand, and DEI and Seller, on the other hand, further agree not to use any such Confidential Information of the other in violation of any applicable securities Laws, including, without limitation, prohibitions thereunder pertaining to trading on material inside information. Such Confidential Information shall include the negotiations leading to this Agreement, the terms and conditions (including economic, legal and other terms) of this Agreement and any agreement referred to herein, information that one party may have caused to deliver to the other party that the delivering party has designated as "Confidential" or "Proprietary" or in like words or information that is generally treated as proprietary (such as financial and operational information), whether or not in written form and whether or not designated as confidential. Confidential Information shall not include information that: (i) is or becomes publicly known (other than as a result of a breach of this Agreement or any other legal duty by the receiving party, its Affiliates or its or its Affiliates' Representatives), (ii) is lawfully received by the receiving party from a third party on a non-confidential basis, which third party is not to the Knowledge of the receiving party bound in a confidential relationship with the disclosing party, or (iii) is generated independently by or for the receiving party without the use of Confidential Information of the disclosing party. If a receiving party, its Affiliates or its or its Affiliates' Representatives are requested or required to disclose any of the Confidential Information of a disclosing party in an investigatory, legal, regulatory or administrative proceeding, such receiving party will, to the extent possible, provide the disclosing party with prompt notice thereof and, except in the case of a Tax Proceeding, the disclosing party may seek a protective order or other appropriate remedy. If no such order or remedy is obtained, then the receiving party may, without liability hereunder, disclose in such proceeding that portion of the Confidential Information of the disclosing party that the receiving party's legal counsel has advised the receiving party it is legally required to disclose. Each of the parties hereto agrees that it shall be responsible for any disclosure of Confidential Information by its Affiliates and its and its Affiliates' Representatives that would constitute a breach of this Section 11.9. The provisions of, and the rights and obligations set forth in, this Section 11.9 shall be in addition to, and not in lieu of, the provisions, rights and obligations set forth in the Confidentiality Agreement, which Confidentiality Agreement shall remain in effect pursuant to its terms.

11.10 No Third Party Beneficiaries. Nothing in this Agreement is intended, or shall be deemed to, confer any rights or benefits upon any Person other than the parties hereto or to make or render any such other Person a third-party beneficiary of this Agreement, except to the extent that an Affiliate of either party or any officers, directors, agents, representatives, employees,

successors or assigns of a party or any of its Affiliates have any rights (including a right to be indemnified pursuant to Article X) under this Agreement.

11.11 Notices. Unless otherwise specified herein, all notices, requests, demands, consents and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, or upon delivery when sent by express mail, courier or other recognized overnight mail or next day delivery service, charges prepaid, or three (3) Business Days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited with a public telegraph company for immediate transmittal, charges prepaid, or when sent by facsimile, with a confirmation copy sent by recognized overnight mail or next day delivery, charges prepaid, addressed as follows:

**If to DEI and Seller, addressed to:**

Disney Enterprises, Inc.
500 South Buena Vista Street
Burbank, California 91521-1030
Facsimile: (818) 569-5146
Attention: General Counsel

**with copies (which shall not constitute notice) to:**

The Walt Disney Company
500 South Buena Vista Street
Burbank, California 91521-1018
Facsimile: (818) 556-3889
Attention: Chief Financial Officer

and

Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Facsimile: (310) 203-7199
Attention: Peter Juzwiak, Esq.

**If to Buyer, addressed to:**

Hoop Holdings, LLC
Hoop Canada Holdings, Inc.
c/o The Children's Place Retail Stores, Inc.
915 Secaucus Road
Secaucus, New Jersey 08540
Facsimile: (201) 808-5637
Attention: General Counsel

**with copies (which shall not constitute notice) to:**

Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
Facsimile: (212) 806-6006
Attention: Jeffrey S. Lowenthal, Esq.

and

The Children's Place Retail Stores, Inc.
915 Secaucus Road
Secaucus, New Jersey 08540
Facsimile: (201) 808-5637
Attention: Chief Financial Officer

or such other address or facsimile number as may be designated by either party hereto by written notice to the other in accordance with this Section 11.11.

11.12 Expenses. Except as otherwise provided in this Agreement, including, without limitation, Sections 6.1, 6.8.2, 6.11.5, 6.12, 6.13, 7.1.2, 7.1.3, 7.2.3, 7.4.4, 7.4.5 and 7.12, each of DEI, Seller and Buyer shall pay its own expenses incident to the

negotiation, preparation and performance of this Agreement and the transactions contemplated hereby (including, without limitation, expenses incurred in connection with the activities and negotiations contemplated by Section 6.7), including the filing fees payable to Governmental Entities (provided, that each of DEI and Buyer shall pay one-half of any filing fees under the Hart-Scott-Rodino Act and the Investment Canada Act) and the fees, expenses and disbursements of their respective accountants and counsel.

11.13 Interest. All arrearages in the payment of any sums due to either party hereto under the provisions of this Agreement shall bear interest from the due date until paid at the lesser of (i) the per annum amount that is equal to two percent (2%) plus the Prime Rate and (ii) the highest rate of interest then allowable pursuant to applicable Law.

11.14 Waivers. No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by a duly authorized officer of each of the parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

11.15 Construction. This Agreement has been fully reviewed and negotiated by the parties hereto and their respective counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted and prior drafts of this Agreement shall be disregarded and inadmissible as proof or indication of the intent of the parties or for any other purpose in the event of any other controversy regarding the meaning, construction or interpretation of this Agreement.

11.16 Severability. If any term or provision of this Agreement shall be found to be void or contrary to applicable Law, such term or provision shall be deemed to be severable from the other terms and provisions hereof, but only to the extent necessary to bring this Agreement within the requirements of such Law, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein; provided, that if the party that would be adversely affected by such severance demonstrates that a material inducement to its entering into this Agreement would be materially impaired, such party shall be entitled to seek an adjudication that this Agreement should be terminated on that ground.

11.17 Dispute Resolution Procedures.

11.17.1 Management Negotiations. In the event of any controversy, dispute or claim between DEI, Seller or any of their Affiliates, on the one hand, and Buyer or any of its Affiliates, on the other hand, arising out of or relating to this Agreement or any provisions hereof or the validity of this Agreement, the parties hereto agree that, prior to submitting such controversy, dispute or claim to the arbitration proceedings described below in this Section 11.17, it shall be submitted to the Chief Strategic Officer of TWDC and the Chief Executive Officer of Buyer (or, if no person holds either such title, a senior executive officer of such entity performing a similar function), who shall negotiate in good faith with one another for a period of not less than five (5) Business Days in an effort to resolve such controversy, dispute or claim.

11.17.2 Arbitrable Disputes. All controversies, disputes and claims between DEI, Seller and/or their Affiliates, on the one hand, and Buyer and/or its Affiliates, on the other hand, arising out of or relating to this Agreement or any provision hereof or the validity of this Agreement that have not been resolved through the procedure set forth in Section 11.17.1 (collectively, **"Arbitrable Disputes"**) must be resolved through binding arbitration administered by ADR Services (the **"Arbitration Administrator"**) in accordance with the terms of this Section 11.17, or such other entity agreed upon by the parties hereto to administer the arbitration of an Arbitrable Dispute. Except as otherwise set forth in this Section 11.17, the U.S. Arbitration Act shall govern the interpretation and enforcement of, and proceedings pursuant to, the provisions of this Section 11.17.

11.17.3 Applicability of California Procedural Law. Unless otherwise stipulated in writing or on the record before the Arbitrator or the Appellate Arbitrators, in either case by all of the parties involved in an Arbitrable Dispute (the **"Arbitration Parties"**) or affected by the stipulation, all Arbitrable Disputes will be governed by California procedural law, including, but not limited to, the procedures set forth in the California Code of Civil Procedure, the California Civil Code, the California Evidence Code, and the California Rules of Court (but not including any local rules), except to the extent such procedures are inconsistent with the express terms of this Section 11.17. It is the intent of the Parties that all pleadings, discovery, motion practice, trial and appeal (including, but not limited to, the format, scope, and substance of, and time requirements applicable to, any filings) proceed as if the Arbitrable Dispute had been brought in the Superior Court of the State of California, except: (i) the Arbitrator and Appellate Arbitrators will be appointed in accordance with Section 11.17.5; (ii) the Arbitrator will serve as the finder of fact (and the parties waive any right to a jury); (iii) there will be no interlocutory appellate (e.g., writ) relief available; (iv) discovery will be limited to matters that are directly relevant to the issues in the arbitration unless, upon a finding of good cause by the Arbitrator, leave is granted to conduct discovery that is reasonably calculated to lead to the discovery of admissible evidence; and (v) as otherwise expressly provided for in this Section 11.17. The parties hereto agree to be bound by the provisions of any limitation on the period of time in which claims must be brought under applicable Law or this Agreement, whichever expires earlier.

11.17.4 Arbitration Complaints and Notices. Any arbitration complaint for an Arbitrable Dispute (a **"Complaint"**) or notice of appeal from an arbitration judgment (an **"Appeal Notice"**) hereunder shall be served on the Arbitration Parties pursuant to the notice provisions contained in Section 11.11 (in the case of notice to Affiliates of either party hereto, notice to such party shall be deemed sufficient for purposes hereof). For purposes of this Section 11.17, service of all pleadings and other papers, and the calculation of all time deadlines, shall be made in accordance with California procedural law (including any modifications thereto that the Arbitrator or Appellate Arbitrators may make in accordance with California procedural law). However, without any order by the Arbitrator or Appellate Arbitrators, the Arbitration Parties may agree in writing to extend or shorten any time deadline,

which will be deemed effective upon written notice by the affected Arbitration Parties to the Arbitration Administrator and all other Arbitration Parties.

11.17.5 Selection of Arbitrator and Appellate Arbitrators.

(a) Within five (5) Business Days after service of a Complaint or an Appeal Notice, as the case may be, the Arbitration Parties will select their jointly agreed upon arbitrator or, in the case of an appeal, three (3) appellate arbitrators. The arbitrator shall be a former judge of the California Superior Court (or, if an insufficient number of such former judges are available to serve, former judges from the United States District Court for the Central District of California) and the appellate arbitrators shall be former judges of the California Court of Appeals (or, if an insufficient number of such former judges are available to serve, former judges from the California Superior Court who sat on the California Court of Appeals by designation, or, if an insufficient number of such former judges are available to serve, former judges from the California Superior Court who served on the bench for ten (10) years or more).

(b) If the Arbitration Parties cannot agree upon an arbitrator or all three (3) appellate arbitrators within such time period, on the fifth (5th) Business Day thereafter, the Arbitration Parties will simultaneously exchange a list of five (5) proposed arbitrators or, in the case of an appeal, ten (10) proposed appellate arbitrators (the **"Party Designations"**). Any persons appearing on both Party Designations shall be designated as the arbitrator or the appellate arbitrators, selected in alphabetical order by last name. If for any reason a person so selected cannot or will not serve as arbitrator or appellate arbitrator, the next person common to both Party Designations in alphabetical order by last name shall be designated as the arbitrator or appellate arbitrator and so on until there are no more persons common to both Party Designations.

(c) If the arbitrator or any appellate arbitrator remains to be selected following the procedures set forth in the preceding subparagraph (b), each Arbitration Party shall have the right to strike up to two names appearing on the other's Party Designation and, on the fifth (5th) Business Day following exchange of the Party Designations, shall notify the other Arbitration Party, in writing, of the names, if any, so stricken (the **"Strike Notices"**).

(d) Each party shall then rank each person remaining on both Party Designations in numerical order of preference (1 being the most preferred, 2 being next, and so on), and, on the second (2nd) Business Day following service of the Strike Notices, the Arbitration Parties shall simultaneously exchange their respective rankings (the **"Priority Designations"**). The person with the lowest combined total from the Priority Designations shall be designated as the arbitrator or, in the case of an appeal, the three (3) persons with the lowest combined totals from the Priority Designations shall be designated as the appellate arbitrators. Any ties will be broken by choosing the person first in alphabetical order by last name. If, for any reason, a person so selected cannot or will not serve as arbitrator or appellate arbitrator, the next person in order using the methodology prescribed in this Section 11.17.5 shall be designated as arbitrator or appellate arbitrator and so on until no more names appear on the Arbitration Parties' Priority Designations.

(e) If there are no more names from which to select an arbitrator or appellate arbitrator on the parties' Priority Designations or if any party fails to comply with the selection procedures herein, the Arbitration Administrator shall provide a list of five (5) persons or, in the case of an appeal, ten (10) persons, all of whom shall be former judges complying with the requirements of Section 11.17.5(a). Each Arbitration Party may strike up to two (2) names from this list, and of those who are left the person whose name is first in alphabetical order by last name shall serve as arbitrator or, in the case of an appeal, the first three (3) persons in alphabetical order by last name shall serve as appellate arbitrators. The person selected pursuant to this Section 11.17.5 to serve as arbitrator is referred to herein as the **"Arbitrator"** and the persons selected pursuant to this Section 11.17.5 to serve as appellate arbitrators are referred to herein as the **"Appellate Arbitrators."**

(f) Within two (2) Business Days after selection of the Arbitrator or the Appellate Arbitrators, the Arbitration Parties will inform the Arbitration Administrator, in writing and on a confidential basis, of the name and contact information of the Arbitrator or the Appellate Arbitrators.

(g) If the Arbitrator or any Appellate Arbitrator becomes unable to serve for any reason, the next arbitrator or appellate arbitrator who would have been chosen pursuant to the procedure set forth in this Section 11.17.5 shall be selected or, if there is no such arbitrator or appellate arbitrator available as a result of such procedure, the Arbitration Parties shall repeat the procedure set forth in this Section 11.17.5 to select another arbitrator or appellate arbitrator.

11.17.6 Arbitrator Neutrality. In order to serve as an Arbitrator or Appellate Arbitrator for a Arbitrable Dispute, the appointed Arbitrator or Appellate Arbitrator must be neutral with respect to the matters being arbitrated, the Arbitration Parties, and their counsel, consistent with California Code of Civil Procedure Section 170.1. The Arbitration Administrator is responsible for ensuring that appropriate disclosures are made by the Arbitrator and Appellate Arbitrators to achieve and maintain such neutrality. If there is a dispute over the neutrality of an appointed Arbitrator or Appellate Arbitrator, the dispute shall be resolved by the Arbitration Administrator.

11.17.7 Emergency Relief. If an Arbitration Party is seeking emergency relief prior to the appointment of the Arbitrator, the parties hereto agree that the AAA Optional Rules for Emergency Measures of Protection shall apply, but that the Arbitration Administrator shall appoint an arbitrator to preside over the emergency proceedings (the **"Emergency Arbitrator"**). The Emergency Arbitrator shall have jurisdiction: (i) only until the selection of the Arbitrator in accordance with Section 11.17.5; and (ii) only over such matters requiring emergency relief.

11.17.8 Arbitration Hearing/Arbitrator's Rulings, Statement of Decision and Judgment. Unless otherwise agreed among all Arbitration Parties and the Arbitrator, there shall be a record of all proceedings conducted in conjunction with any arbitration. The Arbitrator will be vested with the full powers of a judge of the Superior Court of the State of California and will have the right to award or include in the Arbitrator's award any relief that the Arbitrator deems proper in the circumstances, subject to the limitation on liability set forth in Section 11.19, including, without limitation, money damages (with interest on unpaid amounts from the date due) and specific performance, a temporary restraining order, a preliminary and/or permanent injunction or other equitable relief, provided, that the Arbitrator will not have the authority to declare any mark generic or otherwise invalid except to the extent necessary to rule on any claim of intellectual property infringement between the parties hereto (in which event such ruling shall be binding as between the parties hereto but such ruling shall not be binding as between either party hereto and any other Person). The Arbitrator shall issue rulings, a statement of decision, and a judgment as if the Arbitrator were a judge of the Superior Court of the State of California.

11.17.9 Appeal.

(a) Within twenty (20) Business Days of receipt of any judgment, any Arbitration Party may notify the Arbitration Administrator of an intention to appeal to an arbitral tribunal. To appeal the judgment of an Arbitrator, an Arbitration Party must follow all of the prerequisites for appealing a judgment of the Superior Court of the State of California. All prerequisites ordinarily directed to the clerk of such court shall be directed to the Arbitration Administrator.

(b) All appeals will be made to three (3) Appellate Arbitrators appointed (or replaced, if necessary) pursuant to Section 11.17.5.

(c) The Appellate Arbitrators will conduct a hearing, review the judgment of the Arbitrator, and issue an appellate decision applying the same standards of review (and all of the same presumptions) as if the Appellate Arbitrators were judges of the California Court of Appeal reviewing a judgment of the Superior Court. The Appellate Arbitrators will be vested with the same powers as a California Court of Appeal (including the power to remand a matter to an Arbitrator, or a replacement Arbitrator, in accordance with the rights of a party following an appeal).

(d) The Appellate Arbitrators' decision will be final and binding (unless remanded to the Arbitrator, or replacement Arbitrator, pursuant to subparagraph (c) of this Section 11.17.9), as to all matters of substance and procedure.

11.17.10 Jurisdiction/Venue/Enforcement of Award. The parties hereto consent and submit to the exclusive personal jurisdiction and venue of the Superior Court and the United States District Court, located in the County of Los Angeles, State of California, to compel arbitration of an Arbitrable Dispute in accordance with this Section 11.17, to enforce any arbitration award granted pursuant to this Section 11.17, including, without limitation, any award granting equitable relief, and to otherwise enforce this Section 11.17 and carry out the intentions of the parties to resolve all Arbitrable Disputes through arbitration. All arbitrations under this Section 11.17 shall be conducted in Los Angeles, California.

11.17.11 Discovery. Subject to and without limiting Section 11.17.3, (i) each Arbitration Party will, upon the written request of the other Arbitration Party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim; (ii) at the request of an Arbitration Party, the Arbitrator shall have the discretion to order examination by deposition of witnesses to the extent the Arbitrator deems such additional discovery relevant and appropriate (provided, that each Arbitration Party shall be entitled, in its respective sole discretion, to conduct depositions of up to five (5) fact witnesses and up to two (2) expert witnesses; (iii) all objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information; (iv) any dispute regarding discovery, or the relevant scope thereof, shall be determined by the Arbitrator, which determination shall be conclusive; and (v) all discovery shall be completed within the time period established by the Arbitrator.

11.17.12 Res Judicata, Collateral Estoppel and Law of the Case. A decision of the Arbitrator and Appellate Arbitrators shall have the same force and effect with respect to collateral estoppel, res judicata and law of the case that such decision would have been entitled to if decided in a court of law, but in no event shall such award be used by or against an Arbitration Party in a Non-Signatory Dispute.

11.17.13 Confidential Proceedings. All arbitration proceedings, including, without limitation, any appellate proceedings, will be closed to the public and confidential, and all records relating thereto will be maintained by the Arbitration Parties as Confidential Information in accordance with Section 11.9 and will be permanently sealed, except as necessary to obtain court confirmation of the judgment of the Arbitrator or the decision of the Appellate Arbitrators, as applicable, and except as necessary to give effect to res judicata and collateral estoppel (e.g., in a dispute between the Arbitration Parties that is not an Arbitrable Dispute), in which case all filings with any court shall be sealed to the extent permitted by the court and applicable Law.

11.17.14 Arbitrator Fees and Arbitration Costs. The Arbitrators or Appellate Arbitrators, as the case may be, will have no authority to award any damages that are inconsistent with Section 11.19. The Arbitration Parties will share equally the fees of the Arbitrator and Appellate Arbitrators and administrative costs of the arbitration (including reporter's fees, but not including filing fees), with each side obligated for its pro rata share of the total (subject to reallocation as provided below). The determination of whether there are more than two sides will be made by the Arbitration Administrator, which determination may be reviewed by the Arbitrator upon the request of any Arbitration Party. The fees of the Arbitrator and Appellate Arbitrators and administrative costs of the arbitration paid by the prevailing Arbitration Party (as determined at the conclusion of all proceedings, including any appeal, remand or subsequent appeals) will be awarded as costs to the prevailing Arbitration Party. The entitlement of an Arbitration Party

to attorneys' fees and other additional costs shall be determined in accordance with any agreements between the Arbitration Parties governing such matters and California procedural law.

11.17.15 Non-Signatory Legal Actions. As used in this Section 11.17, "Arbitrable Dispute" does not include compulsory or permissive cross-claims between the parties that arise in a legal action brought by or against a non-signatory hereto (**"Non-Signatory Dispute"**). However, a party that has the right to assert a permissive cross-claim against another party in a Non-Signatory Dispute may choose to treat that claim as an Arbitrable Dispute and assert it in accordance with the terms of this Section 11.17.

11.17.16 Expedited Procedures. Consistent with the expedited nature of arbitration, it is the mutual intent of the parties that under all circumstances any controversies, disputes or claims between them be resolved expeditiously, and either Arbitration Party may, upon application to the Arbitrator for good cause shown, move the Arbitrator for extraordinary expedition (including, without limitation, the fixing of a discovery cut-off date and dates for the commencement and completion of hearings).

11.17.17 No Declaratory Relief. Notwithstanding anything contained herein to the contrary, Buyer shall not be entitled to submit any action for declaratory relief (or any comparable action for a determination that Buyer has not violated, defaulted under or otherwise breached this Agreement or any other related agreement entered into in connection herewith) to the arbitration proceedings contemplated by this Section 11.17 or in court or through any other dispute resolution mechanism other than as contemplated by Section 11.17.1.

11.17.18 Confidentiality Agreement. Notwithstanding anything to the contrary contained herein, the Confidentiality Agreement shall not be governed by the provisions of this Section 11.17.

11.17.19 Survivability. The provisions of this Section 11.17 shall survive the expiration or earlier termination of this Agreement indefinitely.

11.18 Governing Law; Remedies.

11.18.1 Except to the extent that certain matters may be governed by federal law, this Agreement shall be deemed to have been entered into in the State of California and shall be interpreted and construed in accordance with the laws of the State of California applicable to agreements executed and to be performed therein by each party hereto.

11.18.2 Each party hereby acknowledges and agrees that, in the event of any breach or prospective breach of this Agreement, the remedies of each party shall include, without limitation, money damages (if and to the extent available), any form of equitable relief, including, without limitation, any temporary restraining order, preliminary injunction, permanent injunction, specific performance or any other form of relief in equity (if such relief is available and such party is able to satisfy the requirements necessary to obtain such relief), and any other right or remedy available to such party as a result of such breach under this Agreement, at law, in equity or otherwise. The parties acknowledge and agree that money damages may not be an adequate remedy for a breach of this Agreement and that a non-breaching party may, in its sole discretion, apply for a temporary restraining order, a preliminary injunction, a permanent injunction, specific performance or other form of equitable relief (without the posting of any bond or other security) as may be just and proper in order to enforce the applicable provision of this Agreement or prevent any violation thereof. Any such equitable relief shall not be exclusive and any party seeking such relief shall also be entitled to seek and enforce any other right or remedy available to it, including money damages. The parties hereby acknowledge and agree that all remedies sought under this Agreement, including without limitation actions for equitable relief hereunder, shall be resolved through the dispute resolution procedures set forth in Section 11.17.

11.18.3 The provisions of this Section 11.18 shall survive the expiration or earlier termination of this Agreement indefinitely.

11.19 Limitation of Liability. Notwithstanding anything contained herein to the contrary, except for any Loss paid to third parties for which either party hereto is obligated to indemnify the other party pursuant to Article X, neither party shall be liable under this Agreement to the other party for any punitive, exemplary, consequential, incidental, indirect or special damages (including loss of profits) based upon breach of warranty, breach of contract, negligence, strict liability and tort, or any other legal theory. With respect to any Loss paid to third parties for which either party hereto is obligated to indemnify the other party pursuant to Article X, no such limitation on damages shall apply.

11.20 Joint and Several Liability of USA Purchaser and Canadian Purchaser. Notwithstanding anything to the contrary contained herein, USA Purchaser and Canadian Purchaser shall be jointly and severally liable for all of the liabilities, duties and obligations of USA Purchaser, Canadian Purchaser and/or Buyer hereunder without regard to (i) the party or parties to whom this Agreement allocates any such liability, duty or obligation, or (ii) the party or parties from whose action, omission, breach or violation any such liability, duty or obligation arises or on whose action, omission, breach or violation any such liability, duty or obligation is based.

# # #

[Signature Page Follows]

# # #

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers all as of the day and year first above written.

**"DEI"**

DISNEY ENTERPRISES, INC.

By: /s/ James M. Kapenstein
Name: James M. Kapenstein
Title: Vice President-Counsel

**"USA PURCHASER"**

HOOP HOLDINGS, LLC

By: /s/ Ezra Dabah
Name: Ezra Dabah
Title: Chief Executive Officer

**"SELLER"**

DISNEY CREDIT CARD SERVICES, INC.

By: /s/ Aldo Manzini
Name: Aldo Manzini
Title: Senior Vice President

**"CANADIAN PURCHASER"**

HOOP CANADA HOLDINGS, INC.

By: /s/ Ezra Dabah
Name: Ezra Dabah
Title: Chief Executive Officer

GUARANTEE BY TCP

The Children's Place Retail Stores, Inc., a Delaware corporation (**"Guarantor"**), acknowledges that it owns a material interest, directly or indirectly, in USA Purchaser and Canadian Purchaser and therefore stands to benefit substantially from the transactions contemplated by this Agreement. Accordingly, as a material inducement to DEI and Seller to enter into this Agreement, which DEI and Seller would not have done in the absence of this guarantee, Guarantor hereby absolutely and unconditionally guarantees to DEI and Seller the full and timely performance of all of the obligations of Buyer under the terms and conditions of this Agreement and the Deferred Lease Assignment and Assumption Agreement, including any amendments, modifications, extensions or compromises thereof, required to be performed by Buyer (collectively, the **"Obligations"**); provided, that (a) the term "Obligations" as used herein shall not include obligations under any Related Agreements and (b) in the event that Buyer breaches this Agreement by failing to close the transactions contemplated by this Agreement notwithstanding the fact that all of the conditions to the obligations of Buyer to effect the Closing, as set forth in Sections 8.1 and 8.2, have been fulfilled, satisfied or waived, the liability of Guarantor under this guarantee arising out of or in connection with such breach (and only such breach) shall not exceed One Hundred Twenty Five Million Dollars ($125,000,000). Guarantor acknowledges and agrees that: (i) this is a guarantee of payment and performance and not of collectibility only; (ii) Guarantor's responsibility for the Obligations is in no way conditioned upon any requirement that DEI or Seller first attempt to collect any of the Obligations from Buyer and, upon demand from DEI or Seller, the obligations of Guarantor shall become immediately due and payable, without demand, presentment, protest, notice of acceptance, notice of any obligations incurred, or any other notices of any kind or nature, each of which is expressly waived by Guarantor; (iii) this guarantee shall be binding upon Guarantor notwithstanding the addition, substitution or release of any Person primarily or secondarily liable for any Obligation, the bankruptcy, insolvency or other inability to pay or perform of Buyer, or any other act or omission that might in any manner or to any extent vary the risk of Guarantor or otherwise operate as a release or discharge of Guarantor; (iv) Guarantor shall not, until the final payment and performance in full of all Obligations, exercise any rights against Buyer arising as a result of payment by Guarantor hereunder, by way of subrogation, reimbursement, restitution, setoff, recoupment, counterclaim or otherwise; (v) the payment of any amount due to Guarantor by Buyer is subordinated to the prior payment in full of all of the Obligations, and any amounts received by Guarantor in respect thereof while any Obligations are still outstanding shall be received by Guarantor as trustee for DEI and Seller and shall be promptly paid over to DEI and Seller; and (vi) upon demand by DEI or Seller, Guarantor shall pay all documented out-of-pocket costs and expenses (including court costs and reasonable legal expenses) reasonably incurred by DEI and/or Seller in connection with the enforcement of this guarantee. Guarantor represents and warrants to DEI and Seller that this guarantee has been duly and validly executed by Guarantor and constitutes the legally valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms. Capitalized terms used herein without definition have the meanings assigned thereto in the Agreement. The terms of Article XI of the Agreement, including, without limitation, Section 11.19, are hereby incorporated into this guarantee as if set forth in full herein, with the exception that references to "Buyer" therein shall be deemed to be references to "Guarantor" for purposes of this guarantee.

**"Guarantor"**
The Children's Place Retail Stores, Inc.,
a Delaware corporation

By: /s/ Ezra Dabah
Name: Ezra Dabah
Title: Chief Executive Officer

TABLE OF CONTENTS

| | |
|---|---|
| 1.1 | TCP Securities |
| 5.1.5(a) | Capital Stock |
| 5.1.5(a)(i) | Beneficial Holders of 5% or more of TCP Securities |
| 5.1.5(a)(ii) | Subsidiaries |
| 5.1.5(b) | Buyer's Financing and Liquidity |
| 5.4 | |

_____

** *This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission*.

(1) The Company agrees to furnish supplementally a copy of any omitted schedules to this exhibit to the Securities and Exchange Commission upon request.

**FOURTH AMENDED AND RESTATED**
**LOAN AND SECURITY AGREEMENT**

**by and among**

**THE CHILDREN'S PLACE RETAIL STORES, INC.,**
**and**
**EACH OF ITS SUBSIDIARIES THAT ARE SIGNATORIES HERETO**
**as Borrowers,**

**THE FINANCIAL INSTITUTIONS NAMED HEREIN,**
**as Lenders,**

**and**

**WELLS FARGO RETAIL FINANCE, LLC,**
**as Agent**

**CONGRESS FINANCIAL CORPORATION (NEW ENGLAND),**

**as Documentation Agent**

**and**

**LASALLE RETAIL FINANCE, A DIVISION OF LASALLE BUSINESS CREDIT, LLC**

**as Co-Agent**

## TABLE OF CONTENTS

SCHEDULES AND EXHIBITS



**FOURTH AMENDED AND RESTATED**
**LOAN AND SECURITY AGREEMENT**

**THIS FOURTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT** (this "Agreement"), is entered into this 30th day of October, 2004, to be effective as of October 31, 2004, among **THE CHILDREN'S PLACE RETAIL STORES, INC.,** a Delaware corporation ("Parent") and each of Parent's Subsidiaries identified on the signature pages hereof (such Subsidiaries, together with Parent, are referred to hereinafter each individually as a "Borrower", and individually and collectively, jointly and severally, as the "Borrowers"), with each of its chief executive office located at 915 Secaucus Road, Secaucus, New Jersey 07094, on the one hand, and the financial institutions listed on the signature pages hereof (such financial institutions, together with their respective successors and assigns, are referred to hereinafter each individually as a "Lender" and collectively as the "Lenders"), and **WELLS FARGO RETAIL FINANCE, LLC,** a Delaware limited liability company, as Agent, **CONGRESS FINANCIAL CORPORATION (NEW ENGLAND)**, a Massachusetts corporation, as Documentation Agent and **LASALLE RETAIL FINANCE, A DIVISION OF LASALLE BUSINESS CREDIT, LLC**, as Co-Agent, on the other hand.

**RECITALS**

A. Parent and Wells Fargo Retail Finance, LLC and certain other Lenders are parties to that certain Third Amended and Restated Loan and Security Agreement dated as of April 25, 2003 (as amended, the "Existing Loan Agreement").

B. Borrowers, Agent, Documentation Agent, and Lenders desire to amend and restate in its entirety the Existing Loan Agreement.

The parties agree that the Existing Loan Agreement is amended and restated as follows:

**1. DEFINITIONS AND CONSTRUCTION.**

**1.1 Definitions**. As used in this Agreement, the following terms shall have the following definitions:

"Account Debtor" means any Person who is or who may become obligated under, with respect to, or on account of, an Account.

"Accounts" means all currently existing and hereafter arising accounts, contract rights, Revolving Accounts, and all other forms of obligations owing to Borrower arising out of the sale or lease of goods or the rendition of services by Borrower, irrespective of whether earned by performance, and any and all credit insurance, guaranties, or security therefor.

"ACH Transactions" means any cash management or related services (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) provided by a Bank Product Provider for the account of Administrative Borrower or its Subsidiaries.

"Acquisition Agreement: means that certain Acquisition Agreement dated October 19, 2004 entered into by and among Hoop Holdings, LLC, Hoop Canada Holdings, Inc., Disney Enterprises, Inc. and Disney Credit Card Services, Inc. and The Children's Place Retail Stores, Inc., as guarantor.

"Adjusted LIBOR Rate" means, with respect to each Interest Period for any LIBOR Rate Loan, the rate per annum (rounded upwards, if necessary, to the next whole multiple of 1/16 of 1% per annum) determined by dividing (a) the LIBOR Rate for such Interest Period by (b) a percentage equal to (i) 100% minus (ii) the Reserve Percentage. The Adjusted LIBOR Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage.

"Administrative Borrower" has the meaning set forth in Section 18.8.

"Advances" has the meaning set forth in Section 2.1(a).

"Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For purposes of this definition, "control" as applied to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract, or otherwise.

"Agent" means Wells Fargo Retail, solely in its capacity as agent for the Lenders, and shall include any successor agent.

"Agent Advance" has the meaning set forth in Section 2.1(h).

"Agent Loan" has the meaning set forth in Section 2.1(g).

"Agent-Related Persons" means Agent, together with its Affiliates, and the officers, directors, employees, counsel, agents, and attorneys-in-fact of Agent and such Affiliates.

"Agent's Account" has the meaning set forth in Section 2.8.

"Agent's Liens" means the Liens granted by Borrowers or their Subsidiaries to Agent under this Agreement or the other Loan Documents.

"Agreement" has the meaning set forth in the preamble hereto.

"Applicable Prepayment Premium" means, as of any date of determination, an amount equal to (a) during the period of time from and after the date of the execution and delivery of this Agreement up to the date that is October 31, 2006, 0.50% times the sum of the Maximum Amount, and (b) at all times on or after October 31, 2006 there shall not be any prepayment premium.

"Assignee" has the meaning set forth in Section 15.1.

"Assignment and Acceptance" has the meaning set forth in Section 15.1(a) and shall be in the form of Exhibit A-1.

"Authorized Person" means any officer or other authorized employee of Borrower.

"Availability" means, as of the date of determination, the result (so long as such result is a positive number) of (a) the lesser of the Borrowing Base or the Maximum Amount, less (b) the Revolving Facility Usage.

"Average Unused Portion of Maximum Amount" means, as of any date of determination, (a) an amount equal to the Maximum Amount, less (b) the average Daily Balance of Obligations that were outstanding during the immediately preceding month.

"Bank Product" means any financial accommodation extended to Administrative Borrower or its Subsidiaries by a Bank Product Provider (other than pursuant to this Agreement) including but not limited to: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) purchase cards, (e) ACH Transactions, (f) cash management, including controlled disbursement, accounts or services, or (g) transactions under Hedge Agreements.

"Bank Product Agreements" means those agreements entered into from time to time by Administrative Borrower or its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Obligations" means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by Administrative Borrower or its Subsidiaries to any Bank Product Provider pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all such amounts that Administrative Borrower or its Subsidiaries are obligated to reimburse to Agent or any member of the Lender Group as a result of Agent or such member of the Lender Group purchasing participations from, or executing indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to Administrative Borrower or its Subsidiaries.

"Bank Product Provider" means Wells Fargo or any of its Affiliates.

"Bank Product Reserve" means, as of any date of determination, the amount of reserves that Agent has established (based upon the Bank Product Providers' reasonable determination of the credit exposure in respect of the Bank Products) in respect of Bank Products then provided or outstanding.

"Bankruptcy Code" means the United States Bankruptcy Code (11 U.S.C.ss. 101 et seq.), as amended, and any successor statute.

"Benefit Plan" means a "defined benefit plan" (as defined in Section 3(35) of ERISA) for which Borrower, any Subsidiary of Borrower, or any ERISA Affiliate has been an "employer" (as defined in Section 3(5) of ERISA) within the past six years.

"Books" means all of Administrative Borrower's and its Subsidiaries books and records including: ledgers; records indicating, summarizing, or evidencing Borrower's properties or assets (including the Collateral) or liabilities; all information relating to Borrower's business operations or financial condition; and all computer programs, disk or tape files, printouts, runs, or other computer prepared information.

"Borrower" and "Borrowers" have the respective meanings set forth in the preamble to this Agreement.

"Borrowing" means a borrowing hereunder consisting of Advances made on the same day by the Lenders, or by Agent in the case of an Agent Loan or an Agent Advance.

"Borrowing Base" has the meaning set forth in Section 2.1(a).

"Business Day" means (a) any day that is not a Saturday, Sunday, or a day on which banks in Boston, Massachusetts, are required or permitted to be closed, and (b) with respect to all notices, determinations, fundings and payments in connection with the LIBOR Rate or LIBOR Rate Loans, any day that is a Business Day pursuant to clause (a) above and that is also a day on which trading in Dollars is carried on by and between banks in the London interbank market.

"Business Plan" means Parent's and its Subsidiaries' business plans attached hereto as Exhibit B-1, together with any amendment, modification, or revision to such business plan approved by Agent.

"Change of Control" shall be deemed to have occurred at such time as Parent's existing shareholders cease to be the "beneficial owners" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of more than 25% of the total voting power of all classes of stock then outstanding of Parent normally entitled to vote in the election of directors.

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

"Closing Date" means the date of the first to occur of the making of the initial Advance or the issuance of the initial Letter of Credit.

"Code" means the California Uniform Commercial Code.

"Collateral" means each of the following:

(a) the Accounts,

(b) the Books,

(c) the Equipment,

(d) the General Intangibles,

(e) the Inventory,

(f) the Investment Property,

(g) the Negotiable Collateral,

(h) any money, or other assets of any Borrower that now or hereafter come into the possession, custody, or control of the Lender Group, and

(i) the proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any or all of the Collateral, and any and all Accounts, Books, Equipment, General Intangibles, Inventory, Investment Property, Negotiable Collateral, money, deposit accounts, or other tangible or intangible property resulting from the sale, exchange, collection, or other disposition of any of the foregoing, or any portion thereof or interest therein, and the proceeds thereof.

“Collateral” expressly excludes any share of stock, membership interest, or other ownership interest in and to Hoop Holdings, LLC, Hoop Retail Stores, LLC or The Disney Store, LLC.

"Collateral Access Agreement" means a landlord waiver, mortgagee waiver, bailee letter, or acknowledgment agreement of any warehouseman, processor, lessor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in the Equipment or Inventory, in each case, in form and substance satisfactory to Agent.

"Collections" means all cash, checks, notes, instruments, and other items of payment (including, insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds).

"Commitment" means, at any time with respect to a Lender, the principal amount set forth beside such Lender's name under the heading "Commitment" on Schedule C-1 or on the signature page of the Assignment and Acceptance pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 15.1, as such Commitment may be adjusted from time to time in accordance with the provisions of Section 15.1 and "Commitments" means, collectively, the aggregate amount of the commitments of all of the Lenders.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 and delivered by the chief accounting officer of Parent to Agent.

"Daily Balance" means, with respect to each day during the term of this Agreement, the amount of an Obligation owed at the end of such day.

"deems itself insecure" means that the Person deems itself insecure in accordance with the provisions of Section 1208 of the Code.

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

"Defaulting Lender" has the meaning set forth in Section 2.1(f)(ii).

"Defaulting Lenders Rate" means the Reference Rate for the first three days from and after the date the relevant payment is due and thereafter at the interest rate then applicable to Advances.

"Designated Account" means account number 20-3024941126-6 of Administrative Borrower maintained with Administrative Borrower's Designated Account Bank, or such other deposit account of Administrative Borrower (located within the United States) which has been designated, in writing and from time to time, by Administrative Borrower to Agent.

"Designated Account Bank" means Wachovia National Bank, whose office is located at 100 Fidelity Plaza, North Brunswick, New Jersey 08905 and whose ABA number is 021200025.

"Disney License Agreement" means that certain License and Conduct of Business Agreement to be entered into by and among certain subsidiaries of the Borrower and TDS Franchising, LLC.

"Disney Stores Acquisition" means the transaction, as a totality, comprised of the acquisition by Hoop Holdings, LLC and Hoop Canada Holdings, Inc. of the ownership interests in, and business and assets of, The Disney Store, LLC and The Disney Store (Canada) Ltd., as more particularly set forth in the Acquisition Agreement.

"Documentation Agent" means Congress Financial Corporation (New England), a Massachusetts corporation, solely in its capacity as Documentation Agent.

"Dollars or $" means United States dollars.

"Eligible Accounts" means under Five (5) business day accounts due on a non-recourse basis from major credit card processors (which, if due on account of a private label credit card program, are deemed in the discretion of the Agent to be eligible).

"Eligible Inventory" means Inventory consisting of first quality finished goods held for sale in the ordinary course of the Borrowers' business (other than inventory of Children’s Place Canada), that is reasonably acceptable to Agent in all respects, that is located at a Borrower's premises identified on Schedule E-1 or that is in transit to a Borrower if: (a) title to such Inventory has been transferred to such Borrower, (b) the Inventory is insured to Agent's reasonable satisfaction and (c) documentation regarding such Inventory is reasonably acceptable to Agent, and such Inventory strictly complies with all of Borrowers' representations and warranties to the Lender Group. If Eligible Inventory is in transit to a Borrower and has been acquired pursuant to a Letter of Credit, the Letter of Credit must have been drawn upon. Eligible Inventory shall not include slow moving Inventory (as determined in Agent's reasonable business judgment based upon industry practices), or obsolete items, restrictive or custom items, raw materials, work-in-process, components that are not part of finished goods, spare parts, packaging and shipping materials, supplies used or consumed in a Borrower's business, Inventory subject to a security interest or lien in favor of any third Person, bill and hold goods, Inventory that is not subject to Agent's perfected security

interests, defective goods (except for minor defects that do not affect saleability), "seconds," and Inventory acquired on consignment.

"Eligible Transferee" means (a) a commercial bank organized under the laws of the United States, or any state thereof, and having total assets in excess of $5,000,000,000, or the asset based lending Affiliate of such bank, (b) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development or a political subdivision of any such country, and having total assets in excess of $5,000,000,000, or the asset based lending Affiliate of such bank; provided that such bank is acting through a branch or agency located in the United States, (c) a finance company, insurance or other financial institution, or fund that is engaged in making, purchasing, or otherwise investing in commercial loans in the ordinary course of its business and having total assets in excess of $500,000,000, (d) any Affiliate (other than individuals) of an existing Lender, and (e) any other Person approved by Agent and Parent.

"Equipment" means all of Borrowers' present and hereafter acquired machinery, machine tools, motors, equipment, furniture, furnishings, fixtures, vehicles (including motor vehicles and trailers), tools, parts, goods (other than consumer goods, farm products, or Inventory), wherever located, including, (a) any interest of any Borrower in any of the foregoing, and (b) all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1000 et seq., amendments thereto, successor statutes, and regulations or guidance promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) which, within the meaning of Section 414 of the IRC, is: (i) under common control with any Borrower; (ii) treated, together with any Borrower, as a single employer; (iii) treated as a member of an affiliated service group of which any Borrower is also treated as a member; or (iv) is otherwise aggregated with any Borrower for purposes of the employee benefits requirements listed in IRC Section 414(m)(4).

"ERISA Event" means (a) a Reportable Event with respect to any Benefit Plan or Multiemployer Plan, (b) the withdrawal of any Borrower, any of its Subsidiaries or ERISA Affiliates from a Benefit Plan during a plan year in which it was a "substantial employer" (as defined in Section 4001(a)(2) of ERISA), (c) the providing of notice of intent to terminate a Benefit Plan in a distress termination (as described in Section 4041(c) of ERISA), (d) the institution by the PBGC of proceedings to terminate a Benefit Plan or Multiemployer Plan, (e) any event or condition (i) that provides a basis under Section 4042(a)(1), (2), or (3) of ERISA for the termination of, or the appointment of a trustee to administer, any Benefit Plan or Multiemployer Plan, or (ii) that may result in termination of a Multiemployer Plan pursuant to Section 4041A of ERISA, (f) the partial or complete withdrawal within the meaning of Sections 4203 and 4205 of ERISA, of any Borrower, any of its Subsidiaries or ERISA Affiliates from a Multiemployer Plan, or (g) providing any security to any Plan under Section 401(a)(29) of the IRC by any Borrower or its Subsidiaries or any of their ERISA Affiliates.

"Event of Default" has the meaning set forth in Section 8.

“Fee Letter” means that certain Fee Letter dated as of October 31, 2004 entered into by and between the Agent and the Borrowers.

"FEIN" means Federal Employer Identification Number.

"Fiscal Month" means months computed on the retail basis of four weeks, five weeks and four weeks per fiscal quarter.

"Fiscal Year" means a retail year ending on the Saturday closest to January 31.

"Funding Date" means the date on which a Borrowing occurs.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"General Intangibles" means all of Borrowers' present and future general intangibles and other personal property (including contract rights, rights arising under common law, statutes, or regulations, choses or things in action, goodwill, patents, trade names, copyrights, blueprints, drawings, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, infringement claims, computer programs, information contained on computer disks or tapes, literature, reports, catalogs, deposit accounts, insurance premium rebates, tax refunds, and tax refund claims), other than goods, Accounts, and Negotiable Collateral.

"Governing Documents" means the certificate or articles of incorporation, by-laws, or other organizational or governing documents of any Person.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Guaranties" means those certain General Continuing Guaranties executed by Guarantors in favor of Agent and Lenders.

"Guarantors" means Twin Brook, thechildrensplace.com, inc., The Children's Place Canada Holdings, Inc. and The Children's Place (Virginia), Inc.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"Hedge Agreement" means any and all agreements, or documents now existing or hereafter entered into by Administrative Borrower or its Subsidiaries that provide for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging Administrative Borrower's or its Subsidiaries' exposure to fluctuations in interest or exchange rates, loan, credit exchange, security or currency valuations or commodity prices.

"Indebtedness" means as to all of Borrowers (a) all obligations for borrowed money, (b) all obligations evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, interest rate swaps, or other financial products, (c) all obligations as a lessee under capital leases, (d) all obligations or liabilities of others secured by a Lien on any asset of a Person or its Subsidiaries, irrespective of whether such obligation or liability is assumed, (e) all obligations to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices), (f) all obligations owing under Hedge Agreements, and (g) any obligation guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (f) above.

"Indemnified Liabilities" has the meaning set forth in Section 11.3.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Intangible Assets" means, with respect to any Person, that portion of the book value of all of such Person's assets that would be treated as intangibles under GAAP.

"Interest Period" means, for any LIBOR Rate Loan, the period commencing on the Business Day such LIBOR Rate Loan is disbursed or continued, or on the Business Day on which a Reference Rate Loan is converted to such LIBOR Rate Loan, and ending on the date that is one, three or six months thereafter, as selected by Administrative Borrower and notified to Agent as provided in Sections 2.13(a) and (b).

"Inventory" means all present and future inventory (other than inventory of Children's Place Canada) in which any Borrower has any interest, including goods held for sale or lease or to be furnished under a contract of service and all of any Borrower's present and future raw materials, work in process, finished goods, and packing and shipping materials, wherever located.

"Inventory Reserves" means reserves (determined from time to time by Agent in its discretion) for (a) the estimated costs relating to unpaid freight charges, warehousing or storage charges, taxes, duties, and other similar unpaid costs associated with the acquisition of Eligible In-Transit Inventory by Borrowers, plus (b) the estimated reclamation claims of unpaid sellers of Inventory sold to Borrowers.

"Investment Property" means all of Borrowers' presently existing and hereafter acquired or arising investment property (as that term is defined in Section 9115 of the Code).

"IRC" means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

"L/C" has the meaning set forth in Section 2.2(a).

"L/C Guaranty" has the meaning set forth in Section 2.2(a).

"Lender" and "Lenders" have the respective meanings set forth in the preamble to this Agreement, and shall include

any other Person made a party to this Agreement in accordance with the provisions of Section 15.1.

"Lender Group" means, individually and collectively, each of the individual Lenders and Agent.

"Lender Group Expenses" means all: reasonable costs or expenses (including taxes, and insurance premiums) required to be paid by a Borrower or its Subsidiaries under any of the Loan Documents that are paid or incurred by the Lender Group; reasonable fees or charges paid or incurred by the Lender Group in connection with the Lender Group's transactions with Borrowers, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, litigation, and UCC searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles), filing, recording, publication, appraisal (including periodic Collateral appraisals); environmental audits; costs and expenses incurred by Agent in the disbursement of funds to Borrowers (by wire transfer or otherwise); charges paid or incurred by Agent resulting from the dishonor of checks; costs and expenses paid or incurred by Agent to correct any default or enforce any provision of the Loan Documents, or in 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; reasonable costs and expenses paid or incurred by the Lender Group in examining Books; costs and expenses of third party claims or any other suit paid or incurred by the Lender Group in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or the Lender Group's relationship with Borrowers or any guarantor; and the Lender Group's reasonable attorneys fees and expenses incurred in advising, structuring, drafting, reviewing, administering, amending, terminating, enforcing, defending, or concerning the Loan Documents (including attorneys fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning Borrowers or any guarantor of the Obligations), irrespective of whether suit is brought. Notwithstanding anything to the contrary set forth herein, the foregoing shall be subject to the limitations set forth in Section 2.12(e)

"Letter of Credit" means an L/C or an L/C Guaranty, as the context requires.

"Letter of Credit Amount" means 0.75% per annum.

"LIBOR Rate" means, with respect to the Interest Period for a LIBOR Rate Loan, the interest rate per annum (rounded upwards, if necessary, to the next whole multiple of 1/16 of 1% per annum) at which United States dollar deposits are offered to Wells Fargo (or its Affiliates) by major banks in the London interbank market (or other LIBOR Rate market selected by Agent) on or about 11:00 a.m. (Boston time) two Business Days prior to the commencement of such Interest Period in amounts comparable to the amount of the LIBOR Rate Loans requested by and available to Borrower in accordance with this Agreement.

"LIBOR Rate Loans" means any Advance (or any portion thereof) made or outstanding hereunder during any period when interest on such Advance (or portion thereof) is payable based on the Adjusted LIBOR Rate.

"LIBOR Rate Margin" means commencing with October 31, 2004 and at the end of each Fiscal Month thereafter to the following levels corresponding to the following amount of Availability:

| Amount of Availability | LIBOR Rate Margin |
|---|---|
| Greater than $40,000,000 | 1.50% |
| Equal to or less than $40,000,000 and greater than $30,000,000 | 1.75% |
| Equal to or less than $30,000,00 and greater than $20,000,000 | 2.25% |
| Equal to or less than $20,000,000 and greater than $10,000,000 | 2.75% |
| Less than $10,000,000 | 3.00% (subject, however, to waiver by the Required Lenders) |

"Lien" means any interest in property securing an obligation owed to, or a claim by, any Person other than the owner of the property, whether such interest shall be based on the common law, statute, or contract, whether such interest shall be recorded or perfected, and whether such interest shall be contingent upon the occurrence of some future event or events or the existence of some future circumstance or circumstances, including the lien or security interest arising from a mortgage, deed of trust, encumbrance, pledge, hypothecation, assignment, deposit arrangement, security agreement, adverse claim or charge, conditional sale or trust receipt, or from a lease, consignment, or bailment for security purposes and also including reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases, and other title exceptions and encumbrances affecting Real Property.

"Loan Account" has the meaning set forth in Section 2.11.

"Loan Documents" means this Agreement, the Bank Products Agreements, the Letters of Credit, the Lockbox Agreements, any note or notes executed by Borrower and payable to the Lender Group, and any other agreement entered into, now or in the future, in connection with this Agreement.

"Lockbox Account" shall mean a depositary account established pursuant to one of the Lockbox Agreements.

"Lockbox Agreements" means those certain Lockbox Operating Procedural Agreements and those certain Depository Account Agreements, in form and substance satisfactory to Agent, each of which is among Administrative Borrower, Agent, and one of the Lockbox Banks.

"Lockbox Banks" means Wachovia National Bank, or any replacement bank chosen by Borrower and acceptable to Agent.

"Lockboxes" has the meaning set forth in Section 2.8.

"Material Adverse Change" means (a) a material adverse change in the business, prospects, operations, results of operations, assets, liabilities or condition (financial or otherwise) of Borrowers and their Subsidiaries, (b) the material impairment of a Borrower's ability to perform its obligations under the Loan Documents to which it is a party or of the Lender Group to enforce the Obligations or realize upon the Collateral, (c) a material adverse effect on the value of the Collateral or the amount that the Lender Group would be likely to receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation of such Collateral, or (d) a material impairment of the priority of the Lender Group's Liens with respect to the Collateral.

"Maximum Amount" means $130,000,000 plus the amount of the Temporary Overadvance Facility, if it is then outstanding.

"Multiemployer Plan" means a "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA) to which Parent, any of its Subsidiaries, or any ERISA Affiliate has contributed, or was obligated to contribute, within the past six years.

"Negotiable Collateral" means all of Borrowers' present and future letters of credit, notes, drafts, instruments, certificated and uncertificated securities (including the shares of stock of Subsidiaries of Parent (other than Hoop Holdings, LLC, Hoop Retail Stores, LLC or The Disney Store, LLC), but limited to 65% of the outstanding shares of each class of stock of any foreign Subsidiary), investment property, security entitlements, documents, personal property leases (wherein a Borrower is the lessor), chattel paper, and Books relating to any of the foregoing.

"NRLV" means at any time of determination thereof, the ratio, expressed as a percentage, of the net retail liquidation value of Borrowers' Inventory divided by the retail value of such Inventory, all as set forth in the most recent appraisal delivered to, and approved by Agent.

"Obligations" means (a) all loans, Advances, debts, principal, interest (including any interest that, but for the provisions of the Bankruptcy Code, would have accrued), contingent reimbursement obligations under any outstanding Letters of Credit, liabilities (including all amounts charged to Borrowers' Loan Account pursuant hereto), obligations, fees, charges, costs, or Lender Group Expenses (including any fees or expenses that, but for the provisions of the Bankruptcy Code, would have accrued), lease payments, guaranties, covenants, and duties owing by Borrowers to the Lender Group of any kind and description (whether pursuant to or evidenced by the Loan Documents or pursuant to any other agreement between the Lender Group and any Borrower, and irrespective of whether for the payment of money), whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including any debt, liability, or obligation owing from any Borrower to others that the Lender Group may have obtained by assignment or otherwise, and further including all interest not paid when due and all Lender Group Expenses that Borrowers are required to pay or reimburse by the Loan Documents, by law, or otherwise, and (b) all Bank Product Obligations. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

"Originating Lender" has the meaning set forth in Section 15.1(e).

"Overadvance" has the meaning set forth in Section 2.6.

"Overadvance Amount" means up to $30,000,000.00 at any one time outstanding.

"Parent" has the meaning set forth in the preamble of this Agreement.

"Participant" has the meaning set forth in Section 15.1(c).

"PBGC" means the Pension Benefit Guaranty Corporation as defined in Title IV of ERISA, or any successor thereto.

"Permitted Liens" means (a) Liens held by the Lender Group, (b) Liens for unpaid taxes that either (i) are not yet due

and payable or (ii) are the subject of Permitted Protests, (c) Liens set forth on Schedule P-1, (d) the interests of lessors under operating leases and purchase money security interests and Liens of lessors under capital leases to the extent that the acquisition or lease of the underlying asset is permitted under Section 7.21 and so long as the Lien only attaches to the asset purchased or acquired and only secures the purchase price of the asset, (e) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of business of Borrowers and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet due and payable, or (ii) are the subject of Permitted Protests, (f) Liens arising from deposits made in connection with obtaining worker's compensation or other unemployment insurance, (g) Liens or deposits to secure performance of bids, tenders, or leases (to the extent permitted under this Agreement), incurred in the ordinary course of business of Borrowers and not in connection with the borrowing of money, (h) Liens arising by reason of security for surety or appeal bonds in the ordinary course of business of any Borrower, (i) Liens of or resulting from any judgment or award that would not cause a Material Adverse Change and as to which the time for the appeal or petition for rehearing of which has not yet expired, or in respect of which any Borrower is in good faith prosecuting an appeal or proceeding for a review, and in respect of which a stay of execution pending such appeal or proceeding for review has been secured, and (j) with respect to any Real Property, easements, rights of way, zoning and similar covenants and restrictions, and similar encumbrances that customarily exist on properties of Persons engaged in similar activities and similarly situated and that in any event do not materially interfere with or impair the use or operation of the Collateral by Borrowers or the value of the Lender Group's Lien thereon or therein, or materially interfere with the ordinary conduct of the business of Borrowers.

"Permitted Protest" means the right of Borrowers to protest any Lien (other than any such Lien that secures the Obligations), tax (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) a reserve with respect to such obligation is established on the books of Borrowers in an amount that is reasonably satisfactory to Agent, (b) any such protest is instituted and diligently prosecuted by Borrowers in good faith, and (c) Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of the Liens of the Lender Group in and to the Collateral.

"Person" means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Plan" means any employee benefit plan, program, or arrangement maintained or contributed to by any Borrower or with respect to which it may incur liability.

"Pro-Rata Share" means, with respect to a Lender, a fraction (expressed as a percentage), the numerator of which is the amount of such Lender's Commitment and the denominator of which is the aggregate amount of the Commitments.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by any Borrower.

"Reference Rate" the rate of interest announced 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 publication or publications as Wells Fargo may designate.

“Reference Rate Loans” means any advance (or portion thereof) made or outstanding hereunder during any period when interest on such Advance is payable based on the Reference Rate.

"Renewal Date" has the meaning set forth in Section 3.4.

"Reportable Event" means any of the events described in Section 4043(c) of ERISA or the regulations thereunder other than a Reportable Event as to which the provision of 30 days notice to the PBGC is waived under applicable regulations.

"Required Lenders" means, at any time, Agent together with such other Lenders whose Pro Rata Shares together with Agent aggregate 50.1% or more of the Commitments; provided, however, that (a) in all circumstances in which there are two or more Lenders, Required Lenders shall include at least one Lender that is not the Agent or an Affiliate of Agent; (b) “Commitments” shall not include the Overadvance Amount in determining Required Lenders, and (c) in connection with the providing of consent for (i) payment by the Borrowers of any of their indemnification obligations to the Walt Disney Companies, as set forth in Section 7.16, below, Required Lenders shall mean the Agent together with such other Lenders whose Pro Rata Shares together with Agent aggregate 66 2/3% or more of the Commitments, and (ii) extension of the term of the Temporary Overadvance Facility beyond December 31, 2004 or postponement of the time for repayment thereof, Required Lenders shall mean all of the Lenders, unanimously.

"Requirement of Law" means, as to any Person: (a) (i) all statutes and regulations and (ii) court orders and injunctions, arbitrators' decisions, and/or similar rulings, in each instance by any Governmental Authority or arbitrator applicable to or binding upon such Person or any of such Person's property or to which such Person or any of such Person's property is subject; and (b) that Person's organizational documents, by-laws and/or other instruments which deal with corporate or similar governance, as applicable.

"Reserve Percentage" for any Interest Period means, as of the date of determination thereof, the maximum percentage (rounded upward, if necessary to the nearest 1/100th of 1%), as determined by Agent (or its Affiliates) in accordance with its (or their) usual procedures (which determination shall be conclusive in the absence of manifest error), that is in effect on such date as prescribed by the Board of Governors of the Federal Reserve System for determining the reserve requirements (including supplemental, marginal, and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities") having a term equal to such Interest Period by Agent or its Affiliates.

"Restructuring Transaction" means (i) the formation of Services Company and Twin Brook by the Parent, (ii) the transfer of certain non-operational assets from the Parent and other of its Subsidiaries to Services Company, (iii) the transfer of the membership interests in Services Company from the Parent to Twin Brook and (iv) the merger of TCPIP, Inc. with and into Services Company.

"Retiree Health Plan" means an "employee welfare benefit plan" within the meaning of Section 3(1) of ERISA that provides benefits to individuals after termination of their employment, other than as required by Section 601 of ERISA.

"Revolving Accounts" means any Account arising from an agreement to extend credit on an ongoing basis through the use of a device such as a credit card or the like, whether or not subject to regulation under Federal Reserve Board Regulation Z, or any state statute or regulation on truth-in-lending.

"Revolving Facility Usage" means, as of any date of determination, the aggregate amount of Advances and undrawn or unreimbursed Letters of Credit outstanding.

"Services Company" means The Children’s Place Services Company, LLC, a Delaware limited liability company.

"Settlement" has the meaning set forth in Section 2.1(i)(i).

"Settlement Date" has the meaning set forth in Section 2.1(i)(i).

"Solvent" means, with respect to any Person on a particular date, that on such date (a) at fair valuations, 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 salable value of the properties and assets of such Person is not less than the amount that will 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, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a 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. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that reasonably can be expected to become an actual or matured liability.

"Subsidiary" of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the shares of stock or other ownership interests having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

"Temporary Overadvance Facility" means a temporary revolving credit facility to be maintained by the Agent and Congress Financial Corporation (New England) for the benefit of the Borrowers in an amount up to the Overadvance Amount, as set forth in Section 2.1(b). The Temporary Overadvance Facility shall be available to the Borrowers if, but only if, the Disney Stores Acquisition has been consummated and all Conditions Precedent contained in Section 3.1(c), below, have been satisfied.

"Twin Brook" means Twin Brook Insurance Co., Inc., a New York captive insurance company.

"Voidable Transfer" has the meaning set forth in Section 15.8.

"Walt Disney Companies" means TDS Franchising, LLC, a California limited liability company; Disney Enterprises, Inc., a Delaware corporation; and Disney Credit Card Services, Inc., a California corporation.

"Wells Fargo" means Wells Fargo Bank, National Association.

"Wells Fargo Retail" means Wells Fargo Retail Finance, LLC, a Delaware limited liability company.

**1.2 Accounting Terms**. All accounting terms not specifically defined herein shall be construed in accordance with GAAP. When used herein, the term "financial statements" shall include the notes and schedules thereto. Whenever the term "Borrowers or

Parent" is used in respect of a financial covenant or a related definition, it shall be understood to mean Parent and its Subsidiaries on a consolidated basis unless the context clearly requires otherwise.

**1.3 Code**. Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein.

**1.4 Construction**. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the term "including" is not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. An Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by the requisite members of the Lender Group. Any reference herein to the repayment in full of the Obligations shall mean the repayment in full in cash of all Obligations other than contingent indemnification Obligations and other than any Bank Product Obligations that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding and are not required to be repaid or cash collateralized pursuant to the provisions of this Agreement. Section, subsection, clause, schedule, and exhibit references are to this Agreement unless otherwise specified. Any reference in this Agreement or in the Loan Documents to this Agreement or any of the Loan Documents shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, and supplements, thereto and thereof, as applicable.

**1.5 Schedules and Exhibits**. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

**2. LOAN AND TERMS OF PAYMENT**.

**2.1 Revolving Advances.**

(a) Amounts. Subject to the terms and conditions of this Agreement, each Lender agrees to make advances ("Advances") to Borrowers in an amount at any one time outstanding not to exceed such Lender's Pro Rata Share of an amount equal to the lesser of (i) the Maximum Amount less the aggregate amount of all undrawn or unreimbursed Letters of Credit, or (ii) the Borrowing Base less the aggregate amount of all undrawn or unreimbursed Letters of Credit. For purposes of this Agreement, "Borrowing Base", as of any date of determination, shall mean the result of:

(i) 90% of Eligible Accounts, plus

(ii) 30% of the retail value of Borrowers' Eligible Inventory, not to exceed 90% of the NRLV of Borrowers' gross Inventory for months other than June through November of each year and 95% of the NRLV of Borrowers' gross Inventory for the months of June through November of each year; plus

(iii) an amount equal to 70% of the Borrowers' cost of Inventory to be acquired pursuant to outstanding commercial Letters of Credit (except that inventory acquired by Letters of Credit for Children's Place Canada shall not be included in this Section). Such Letters of Credit must not allow partial draws unless such draws are for finished goods Inventory concurrently transferred to a Borrower, and draws thereunder must require documentation reflecting the transfer of title to such Borrower (in form and substance satisfactory to Agent) of first quality finished goods Inventory conforming to such Borrower's contract with the seller; less

(iv) the aggregate amount of reserves, if any, established by Agent under Sections 2.1(b), 6.14 and 10.

(b) Temporary Overadvance. Subject to the terms and conditions of this Agreement, in addition to the Advances to be made pursuant to Section 2.1(a), above, the Agent and Congress Financial Corporation (New England) agree to make Advances to Borrowers in an amount at any one time outstanding not to exceed an amount equal to the Overadvance Amount less the aggregate amount of all Advances outstanding under the Temporary Overadvance Facility.

(i) The Temporary Overadvance Facility shall be in place, effective, and available to the Borrower for the making of Advances thereunder commencing upon the execution of this Agreement through December 31, 2004. However, on the date of the consummation of the Disney Stores Acquisition, only Advances in an amount not to exceed $7,500,000 shall be made thereunder in connection with, or to provide funding for, the initial closing costs, advances, and other funding requirements to be made as part of the closing on the Disney Stores Acquisition.

(ii) Advances under the Temporary Overadvance Facility shall be made upon request by the Borrowers, in accordance with Section 2.1(e), below, and shall be available in up to Four (4) equal tranches in the amount of $7,500,000.00 each.

(iii) Advances under the Temporary Overadvance Facility shall be secured by the Collateral and shall constitute Advances and Obligations hereunder. Interest shall accrue on the aggregate outstanding balance of the Temporary Overadvance Facility at the rate set forth in the Fee Letter, and shall be paid as provided in Section 2.7, below.

(iv) At all times that the Temporary Overadvance Facility is outstanding, the Borrowers shall submit to the Agent by 11:00 a.m. (Boston time) on Tuesday of each week, an updated Borrowing Base Certificate as of the close of business on the prior Saturday.

(v) All Obligations outstanding under the Temporary Overadvance Facility shall be paid in full in immediately available funds, without demand, notice, or protest, on or before 5:00 p.m. (Boston time) on Friday, December 31, 2004.

(c) Reserves. Anything to the contrary in this Section 2.1 notwithstanding, Agent may (i) reduce the advance rates based upon Eligible Accounts and Eligible Inventory without declaring an Event of Default if it determines in its reasonable business judgment that there has occurred a Material Adverse Change; and (ii) establish reserves against the Borrowing Base in such amounts as Agent in its reasonable judgment (from the perspective of an asset-based lender) shall deem necessary or appropriate, including reserves on account of (y) sums that Borrowers are required to pay (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay under any section of this Agreement or any other Loan Document and (z) without duplication of the foregoing, amounts owing by Borrowers to any Person to the extent secured by a Lien on, or trust over, any of the Collateral, which Lien or trust, in the reasonable determination of Agent (from the perspective of an asset-based lender), would be likely to have a priority superior to the Liens of Agent (such as landlord liens, ad valorem taxes, or sales taxes where given priority under applicable law) in and to such item of the Collateral.

(d) Revolving Nature. Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement.

(e) Procedure for Borrowing. Each Borrowing shall be made upon Administrative Borrower's irrevocable request therefor delivered to Agent (which notice must be received by Agent no later than 2:00 p.m. (Boston time) on the Funding Date if such advance is for $8,000,000 or less or no later than 2:00 p.m. (Boston time) on the Business Day immediately preceding the requested Funding Date if such advance is for more than $8,000,000) specifying (i) the amount of the Borrowing; and (ii) the requested Funding Date, which shall be a Business Day.

(f) Agent's Election. Promptly after receipt of a request for a Borrowing pursuant to Section 2.1(d) in excess of $8,000,000, the Agent shall elect, in its discretion, (i) to have the terms of Section 2.1(g) apply to such requested Borrowing, or (ii) to make an Agent Loan pursuant to the terms of Section 2.1(h) in the amount of the requested Borrowing. Any requested Borrowing of $8,000,000 or less shall be made as an Agent Loan pursuant to the terms of Section 2.1(h).

(g) Making of Advances.

(i) In the event that the Agent shall elect to have the terms of this Section 2.1(g) apply to a requested Borrowing in excess of $8,000,000 as described in Section 2.1(f), then promptly after receipt of a request for a Borrowing pursuant to Section 2.1(e), the Agent shall notify the Lenders, not later than 2:00 p.m. (Boston time) on the Business Day immediately preceding the Funding Date applicable thereto, by telephone and promptly followed by telecopy, or other similar form of transmission, of the requested Borrowing. Each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to the Agent in same day funds, to such account of the Agent as the Agent may designate, not later than 2:00 p.m. (Boston time) on the Funding Date applicable thereto. After the Agent's receipt of the proceeds of such Advances, upon satisfaction of the applicable conditions precedent set forth in Sections 3.1 and 3.2, the Agent shall make the proceeds of such Advances available to Borrowers on the applicable Funding Date by transferring same day funds equal to the proceeds of such Advances received by the Agent to the Designated Deposit Account; provided, however, that, subject to the provisions of Section 2.1(m), the Agent shall not request any Lender to make, and no Lender shall have the obligation to make, any Advance if the Agent shall have received written notice from any Lender, or otherwise has actual knowledge, that (A) one or more of the applicable conditions precedent set forth in Sections 3.1 or 3.2 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (B) the requested Borrowing would exceed the Availability on such Funding Date.

(ii) Unless Agent receives notice from a Lender on or prior to the Closing Date or, with respect to any Borrowing after the Closing Date, at least one Business Day prior to the date of such Borrowing, that such Lender will not make available as and when required hereunder to Agent for the account of Borrowers the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrowers on such date a corresponding amount. If and to the extent any Lender shall not have made its full amount available to Agent in immediately available funds and Agent in such circumstances has made available to Borrowers such amount, that Lender shall on the Business Day following such Funding Date make such amount available to Agent, together with interest at the Defaulting Lenders Rate for each day during such period. A notice from Agent submitted to any Lender with respect to amounts owing under this subsection shall be conclusive, absent manifest error. If such amount is paid to Agent such payment to Agent shall constitute such Lender's Advance on the date of Borrowing for all purposes of this Agreement. If such amount is not paid to Agent on the Business Day following the Funding Date, Agent will notify Administrative Borrower of such failure to fund and, upon demand by Agent, Borrowers shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Advances composing such Borrowing. The failure of any Lender to make any Advance on any Funding Date shall not relieve any other Lender of any obligation hereunder to make an Advance on such Funding Date, but no Lender shall be responsible for the failure of any other Lender to make the Advance to be made by such other Lender on any Funding Date. Any Lender that fails to make any Advance that it is required to make hereunder on any Funding Date and that has not cured such failure by making such Advance within one Business Day after written demand upon it by Agent to do so, shall constitute a "Defaulting Lender" for purposes of this Agreement until such Advance is made.

(iii) Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrowers to Agent for the Defaulting Lender's benefit; nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder. Amounts payable to a Defaulting Lender shall instead be paid to or retained by Agent. Agent may hold and, in its discretion, re-lend to

Borrowers the amount of all such payments received or retained by it for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents and determining Pro Rata Shares, such Defaulting Lender shall be deemed not to be a "Lender" and such Defaulting Lender's Commitment shall be deemed to be zero. This section shall remain effective with respect to such Defaulting Lender until (A) the Obligations under this Agreement shall have been declared or shall have become immediately due and payable or (B) the requisite non-Defaulting Lenders, Agent, and Borrowers shall have waived such Defaulting Lender's default in writing. The operation of this section shall not be construed to increase or otherwise affect the Commitment of any non-Defaulting Lender, or relieve or excuse the performance by Borrowers of their duties and obligations hereunder.

(h) Making of Agent Loans.

(i) In the event the Agent shall elect to have the terms of this Section 2.1(h) apply to a requested Borrowing in excess of $8,000,000 as described in Section 2.1(f) or in the event of any requested Borrowing of $8,000,000 or less, Agent shall make an Advance in the amount of such Borrowing (any such Advance made solely by Agent pursuant to this Section 2.1(g) being referred to as an "Agent Loan" and such Advances being referred to collectively as "Agent Loans") available to Borrowers on the Funding Date applicable thereto by transferring same day funds to Administrative Borrower's Designated Deposit Account. Each Agent Loan is an Advance hereunder and shall be subject to all the terms and conditions applicable to other Advances, except that all payments thereon shall be payable to Agent solely for its own account (and for the account of the holder of any participation interest with respect to such Advance). Subject to the provisions of Section 2.1(m), the Agent shall not make any Agent Loan if the Agent shall have received written notice from any Lender, or otherwise has actual knowledge, that (i) one or more of the applicable conditions precedent set forth in Sections 3.1 or 3.2 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (ii) the requested Borrowing would exceed the Availability on such Funding Date. Agent shall not otherwise be required to determine whether the applicable conditions precedent set forth in Sections 3.1 or 3.2 have been satisfied on the Funding Date applicable thereto prior to making, in its sole discretion, any Agent Loan.

(ii) The Agent Loans shall be secured by the Collateral and shall constitute Advances and Obligations hereunder, and shall bear interest at the rate applicable from time to time to Obligations pursuant to Section 2.7.

(i) Agent Advances.

(i) Agent hereby is authorized by Borrowers and the Lenders, from time to time in Agent's sole discretion, (1) after the occurrence of a Default or an Event of Default (but without constituting a waiver of such Default or Event of Default), or (2) at any time that any of the other applicable conditions precedent set forth in Section 3.1 or 3.2 have not been satisfied, to make Advances to Borrowers on behalf of the Lenders which Agent, in its reasonable business judgment, deems necessary or desirable (A) to preserve or protect the Collateral, or any portion thereof (other than the Bank Product Obligations), (B) to enhance the likelihood of, or maximize the amount of, repayment of the Obligations, or (C) to pay any other amount chargeable to Borrowers pursuant to the terms of this Agreement, including Lender Group Expenses and the costs, fees, and expenses described in Section 10 (any of the Advances described in this Section 2.1(i) being hereinafter referred to as "Agent Advances"); provided, that Agent shall not make any Agent Advances to Borrowers without the consent of all of the Lenders if the amount thereof would exceed $8,000,000 in the aggregate at any one time.

(ii) Agent Advances shall be repayable on demand and secured by the Collateral, shall constitute Advances and Obligations hereunder, and shall bear interest at the rate applicable from time to time to the Obligations pursuant to Section 2.7.

(j) Settlement. It is agreed that each Lender's funded portion of the Advances is intended by the Lenders to be equal at all times to such Lender's Pro Rata Share of the outstanding Advances. Such agreement notwithstanding, the Agent and the Lenders agree (which agreement shall not be for the benefit of or enforceable by Borrowers) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among them as to the Advances, the Agent Loans, and the Agent Advances shall take place on a periodic basis in accordance with the following provisions:

(i) The Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by the Agent, (1) for itself, with respect to each Agent Loan and Agent Advance, and (2) with respect to Collections received, as to each by notifying the Lenders by telephone and promptly followed by telecopy, or other similar form of transmission, of such requested Settlement, no later than 1:00 p.m. (Boston time) on the Business Date immediately preceding the date of such requested Settlement (the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Advances, Agent Loans, and Agent Advances for the period since the prior Settlement Date, the amount of repayments received in such period, and the amounts allocated to each Lender of the principal, interest, fees, and other charges for such period. Subject to the terms and conditions contained herein: (y) if a Lender's balance of the Advances, Agent Loans, and Agent Advances exceeds such Lender's Pro Rata Share of the Advances, Agent Loans, and Agent Advances as of a Settlement Date, then Agent shall by no later than 1:00 p.m. (Boston time) on the Settlement Date transfer in same day funds to the account of such Lender as Lender may designate, an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Advances, Agent Loans, and Agent Advances; and (z) if a Lender's balance of the Advances, Agent Loans, and Agent Advances is less than such Lender's Pro Rata Share of the Advances, Agent Loans, and Agent Advances as of a Settlement Date, such Lender shall no later than 1:00 p.m. (Boston time) on the Settlement Date transfer in same day funds to such account of the Agent as the Agent may designate, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Advances, Agent Loans, and Agent Advances. Such amounts made available to the Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Agent Loan or Agent Advance and, together with the portion of such Agent Loan or Agent Advance representing each Lender's Pro Rata Share thereof, shall constitute Advances of such Lenders. If any such amount is not made available to the

Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, the Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lenders Rate.

(ii) In determining whether a Lender's balance of the Advances, Agent Loans, and Agent Advances is less than, equal to, or greater than such Lender's Pro Rata Share of the Advances, Agent Loans, and Agent Advances as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received by Agent with respect to principal, interest, fees payable by Borrowers and allocable to the Lenders hereunder, and proceeds of Collateral. To the extent that a net amount is owed to any such Lender after such application, such net amount shall be distributed by Agent to that Lender as part of such Settlement.

(iii) Between Settlement Dates, the Agent, to the extent no Agent Advances or Agent Loans are outstanding, may pay over to Lenders any payments received by the Agent, which in accordance with the terms of the Agreement would be applied to the reduction of the Advances, for application to Lenders' Pro Rata Share of the Advances. If, as of any Settlement Date, Collections received since the then immediately preceding Settlement Date have been applied to Lenders' Pro Rata Share of the Advances other than to Agent Loans or Agent Advances, as provided for in the previous sentence, Lenders shall pay to the Agent for the accounts of the Lenders, and Agent shall pay to the Lenders, to be applied to the outstanding Advances of such Lenders, an amount such that each Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Advances. During the period between Settlement Dates, the Agent with respect to Agent Loans and Agent Advances, and each Lender with respect to the Advances other than Agent Loans and Agent Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by the Agent or the Lenders, as applicable.

(k) Notation. The Agent shall record on its books the principal amount of the Advances owing to each Lender, including the Agent Loans and Agent Advances owing to the Agent, and the interests therein of each Lender, from time to time. In addition, each Lender is authorized, at such Lender's option, to note the date and amount of each payment or prepayment of principal of such Lender's Advances in its books and records, including computer records, such books and records constituting rebuttably presumptive evidence, absent manifest error, of the accuracy of the information contained therein.

(l) Lenders' Failure to Perform. All Advances (other than Agent Loans and Agent Advances) shall be made by the Lenders simultaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Advances hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligation to make any Advances hereunder, and (ii) no failure by any Lender to perform its obligation to make any Advances hereunder shall excuse any other Lender from its obligation to make any Advances hereunder.

(m) Overadvances. In addition to any Agent Advances which may be made in accordance with Section 2.1(i), above, the Agent may make voluntary Overadvances without the written consent of the Required Lenders for amounts charged to the applicable Loan Account for interest, fees or Lender Group Expenses pursuant to Section 2.1(i)(i)(2)(C). If the conditions for borrowing under Section 3.2(d) cannot be fulfilled, the Agent may, but is not obligated to, knowingly and intentionally continue to make Advances (without limiting the ability of the Agent to make Agent Loans) to Borrowers, such failure of condition notwithstanding, so long as, at any time, (i) the outstanding Revolving Facility Usage would not exceed the Borrowing Base for more than 60 consecutive days or more than once in any 180 day period, and the maximum outstanding overadvance amount shall not exceed $2,000,000, without the consent of all of the Lenders, and (ii) the outstanding Revolving Facility Usage (except for and excluding amounts charged to the applicable Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Maximum Amount. The foregoing provisions are for the sole and exclusive benefit of the Agent and the Lenders and are not intended to benefit Borrowers in any way. The Advances that are made pursuant to this Section 2.1(m) shall be subject to the same terms and conditions as any other Agent Advance or Agent Loan, as applicable, except that the rate of interest applicable thereto shall be the rates set forth in Section 2.7(c)(i) without regard to the presence or absence of a Default or Event of Default.

Each Lender shall be obligated to settle with Agent as provided in Section 2.1(j) for the amount of such Lender's Pro Rata Share of any Overadvances made as permitted under this Section 2.1(m).

(n) Effect of Bankruptcy. If a case is commenced by or against any Borrower under the Bankruptcy Code, or other statute providing for debtor relief, then, without the approval of Required Lenders the Lender Group shall not make additional loans or provide additional financial accommodations under the Loan Documents to such Borrower as debtor or debtor-in-possession, or to any trustee for such Borrower, nor consent to the use of cash collateral (provided that the applicable Loan Account shall continue to be charged, to the fullest extent permitted by law, for accruing interest, fees, and Lender Group Expenses).

**2.2 Letters of Credit**.

(a) Agreement to Cause Issuance; Amounts; Outside Expiration Date. Subject to the terms and conditions of this Agreement, Agent agrees to issue letters of credit for the account of Parent or Services Company (each, an "L/C") or to issue guarantees of payment (each such guaranty, an "L/C Guaranty") with respect to letters of credit issued by an issuing bank for the account of Parent or Services Company; provided, however, Parent or Services Company shall have the right to cause Letters of Credit for the purchase of inventory by Children's Place Canada. For purposes of clarification, the inventory referred to herein is not part of Inventory as that term is defined in this Agreement. Agent shall have no obligation to issue a Letter of Credit if any of the following would result:

(i) The aggregate amount of:

(A) all undrawn and unreimbursed Letters of Credit would exceed $100,000,000,

(B) all undrawn and unreimbursed domestic Letters of Credit would exceed $100,000,000; or

(C) all undrawn and unreimbursed Canadian Letters of Credit would exceed $10,000,000; or

(ii) 100% of the aggregate amount of all undrawn and unreimbursed Letters of Credit, would exceed the Borrowing Base less the amount of outstanding Advances (including any Agent Advances and Agent Loans); or

(iii) the aggregate amount of all undrawn or unreimbursed Letters of Credit would exceed the lower of: (x) the Maximum Amount less the amount of outstanding Advances (including any Agent Advances and Agent Loans); or (y) $130,000,000 or up to $160,000,000 in accordance with Section 2.1(b) relating to the Temporary Overadvance Facility.

Borrowers expressly understand and agree that Agent shall have no obligation to arrange for the issuance by issuing banks of the letters of credit that are to be the subject of L/C Guarantees. Borrowers and the Lender Group acknowledge and agree that certain of the letters of credit that are to be the subject of L/C Guarantees may be on the Closing Date. Each Letter of Credit shall have an expiry date no later than the date on which this Agreement is scheduled to terminate under Section 3.4 (without regard to any potential renewal term) and all such Letters of Credit shall be in form and substance acceptable to Agent in its sole discretion. If the Lender Group is obligated to advance funds under a Letter of Credit, Borrowers immediately shall reimburse such amount to Agent and, in the absence of such reimbursement, the amount so advanced immediately and automatically shall be deemed to be an Advance hereunder and, thereafter, shall bear interest at the rate then applicable to Advances under Section 2.7.

(b) Indemnification. Each Borrower hereby agrees to indemnify, save, defend, and hold the Lender Group harmless from any loss, cost, expense, or liability, including payments made by the Lender Group, expenses, and reasonable attorneys fees incurred by the Lender Group arising out of or in connection with any Letter of Credit. Each Borrower agrees to be bound by the issuing bank's regulations and interpretations of any letters of credit guarantied by the Lender Group and opened to or for Parent's or Service Company's account or by Agent's interpretations of any Letter of Credit issued by Agent to or for any Borrower's account, even though this interpretation may be different from such Borrower's own, and such Borrower understands and agrees that the Lender Group shall not be liable for any error, negligence, or mistake, whether of omission or commission, in following such Borrower's instructions or those contained in the Letter of Credit or any modifications, amendments, or supplements thereto. Each Borrower understands that the L/C Guarantees may require the Lender Group to indemnify the issuing bank for certain costs or liabilities arising out of claims by Borrowers against such issuing bank. Each Borrower hereby agrees to indemnify, save, defend, and hold the Lender Group harmless with respect to any loss, cost, expense (including reasonable attorneys fees), or liability incurred by the Lender Group under any L/C Guaranty as a result of the Lender Group's indemnification of any such issuing bank.

(c) Supporting Materials. Borrowers hereby authorize and direct any bank that issues a letter of credit guaranteed by an L/C Guaranty to deliver to Agent all instruments, documents, and other writings and property received by the issuing bank pursuant to such letter of credit, and to accept and rely upon Agent's instructions and agreements with respect to all matters arising in connection with such letter of credit and the related application. A Borrower may or may not be the "applicant" or "account party" with respect to such letter of credit.

(d) Costs of Letters of Credit. Notwithstanding anything to the contrary contained in this Agreement, Borrowers shall not be responsible for any and all charges, commissions, fees (other than the Letter of Credit fee set forth in Section 2.7(b)), and costs relating to any L/C or to the letters of credit guaranteed by an L/C Guaranty.

(e) Indemnification. Immediately upon the termination of this Agreement, Borrowers agree to either (i) provide cash collateral to be held by Agent in an amount equal to 105% of the maximum amount of the Lender Group's obligations under outstanding Letters of Credit, or (ii) cause to be delivered to Agent releases of all of the Lender Group's obligations under outstanding Letters of Credit. At Agent's discretion, any proceeds of Collateral received by Agent after the occurrence and during the continuation of an Event of Default may be held as the cash collateral required by this Section 2.2(e).

(f) Increased Costs. If by reason of (i) any change in any applicable law, treaty, rule, or regulation or any change in the interpretation or application by any governmental authority of any such applicable law, treaty, rule, or regulation, or (ii) compliance by the issuing bank or the Lender Group with any direction, request, or requirement (irrespective of whether having the force of law) of any governmental authority or monetary authority including, without limitation, Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect (and any successor thereto):

(i) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letters of Credit issued hereunder, or

(ii) there shall be imposed on the issuing bank or the Lender Group any other condition regarding any letter of credit, or Letter of Credit, as applicable, issued pursuant hereto;

and the result of the foregoing is to increase, directly or indirectly, the cost to the issuing bank or the Lender Group of issuing, making, guaranteeing, or maintaining any letter of credit, or Letter of Credit, as applicable, or to reduce the amount receivable in respect thereof by such issuing bank or the Lender Group, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Administrative Borrower, and Borrowers shall

pay on demand such amounts as the issuing bank or Agent may specify to be necessary to compensate the issuing bank or Agent for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate set forth in Section 2.7(a) or (c)(i), as applicable. The determination by the issuing bank or Agent, as the case may be, of any amount due pursuant to this Section 2.2(f), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(g) Participations.

(i) Purchase of Participations. Immediately upon issuance of any Letter of Credit in accordance with this Section 2.2, each Lender shall be deemed to have irrevocably and unconditionally purchased and received without recourse or warranty, an undivided interest and participation in the credit support or enhancement provided through the Agent to such issuer in connection with the issuance of such Letter of Credit, equal to such Lender's Pro Rata Share of the face amount of such Letter of Credit (including, without limitation, all obligations of Borrowers with respect thereto, and any security therefor or guaranty pertaining thereto).

(ii) Documentation. Upon the request of any Lender, the Agent shall furnish to such Lender copies of any Letter of Credit, reimbursement agreements executed in connection therewith, application for any Letter of Credit and credit support or enhancement provided through the Agent in connection with the issuance of any Letter of Credit, and such other documentation as may reasonably by requested by such Lender.

(iii) Obligations Irrevocable. The obligations of each Lender to make payments to the Agent with respect to any Letter of Credit or with respect to any credit support or enhancement provided through the Agent with respect to a Letter of Credit, and the obligations of Borrowers to make payments to the Agent, for the account of the Lenders, shall be irrevocable, not subject to any qualification or exception whatsoever, including, without limitation, any of the following circumstances:

(A) any lack of validity or enforceability of this Agreement or any of the other Loan Documents;

(B) the existence of any claim, setoff, defense, or other right which any Borrower may have at any time against a beneficiary named in a Letter of Credit or any transferee of any Letter of Credit (or any Person for whom any such transferee may be acting), any Lender, the Agent, the issuer of such Letter of Credit, or any other Person, whether in connection with this Agreement, any Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transactions between such Borrower or any other Person and the beneficiary named in any Letter of Credit);

(C) any draft, certificate, or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid, or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(D) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents; or

(E) the occurrence of any Default or Event of Default.

**2.3 Intentionally Omitted.**

**2.4 Intentionally Omitted.**

**2.5 Payments.**

(a) **Payments by Borrowers.**

(i) All payments to be made by Borrowers shall be made without set-off, recoupment, deduction, or counterclaim, except as otherwise required by law. Except as otherwise expressly provided herein, all payments by Borrowers shall be made to Agent for the account of the Lenders or Agent, as the case may be, at Agent's address set forth in Section 12, and shall be made in immediately available funds, no later than 2:00 p.m. (Boston time) on the date specified herein. Any payment received by Agent later than 2:00 p.m. (Boston time), at the option of Agent, shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Whenever any payment is due on a day other than a Business Day, such payment shall be made on the following Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

(iii) Unless Agent receives notice from Borrowers prior to the date on which any payment is due to the Lenders that Borrowers will not make such payment in full as and when required, Agent may assume that Borrowers have made such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrowers have not made such payment in full to Agent, each Lender shall repay to Agent on demand such amount

distributed to such Lender, together with interest thereon at the Reference Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(b) **Apportionment and Application.**

(i) Except as otherwise provided with respect to Defaulting Lenders and except as otherwise provided in the Loan Documents (including letter agreements between Agent and individual Lenders), aggregate principal and interest payments shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and payments of fees and expenses (other than fees or expenses that are for Agent's separate account, after giving effect to any letter agreements between Agent and individual Lenders) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee relates. All payments shall be remitted to Agent and all such payments, and all proceeds of Collateral received by Agent, shall be applied as follows:

A. first, to pay any Lender Group Expenses then due to Agent under the Loan Documents, until paid in full,

B. second, to pay any Lender Group Expenses then due to the Lenders under the Loan Documents, on a ratable basis, until paid in full,

C. third, to pay any fees then due to Agent (for its separate accounts, after giving effect to any letter agreements between Agent and the individual Lenders) under the Loan Documents until paid in full,

D. fourth, to pay any fees then due to any or all of the Lenders (after giving effect to any letter agreements between Agent and individual Lenders) under the Loan Documents, on a ratable basis, until paid in full,

E. fifth, to pay interest due in respect of all Agent Advances, until paid in full,

F. sixth, ratably to pay interest due in respect of the Advances (other than Agent Advances) until paid in full,

G. seventh, to pay the principal of all Agent Advances until paid in full,

H. eighth, so long as no Event of Default has occurred and is continuing, to pay (i) first, the entire principal of all Advances under the Temporary Overadvance Facility (or, if less, the portion of the Temporary Overadvance Facility that is then required to be repaid hereunder), but only, and to the extent that, after giving effect to the payment, Availability (other than with respect to the Temporary Overadvance Facility)is greater than $25,000,000.00, and then, the principal of all Advances (other than Advances made under the Temporary Overadvance Facility) until paid in full,

I. ninth, so long as no Event of Default has occurred and is continuing, and at Agent’s election (which election Agent agrees will not be made if an Overadvance would be created thereby), to pay amounts then due and owing by Administrative Borrower or its Subsidiaries in respect of Bank Products, until paid in full,

J. tenth, if an Event of Default has occurred and is continuing, first, to pay the principal of all Advances until paid in full, second, to Agent, to be held by Agent, for the ratable benefit of those Lenders having a Commitment, as cash collateral in an amount up to 105% of the then extant Letters of Credit until paid in full, third, to pay the principal of all Advances under the Temporary Overadvance Facility, and fourth, to Agent, to be held by Agent, for the benefit of the Bank Product Providers, as cash collateral in an amount up to the amount of the Bank Product Reserve established prior to the occurrence of, and not in contemplation of, the subject Event of Default until Administrative Borrower’s and its Subsidiaries’ obligations in respect of the then outstanding Bank Products have been paid in full or the cash collateral amount has been exhausted,

K. eleventh, if an Event of Default has occurred and is continuing, to pay any other Obligations (including the provision of amounts to Agent, to be held by Agent, for the benefit of the Bank Product Providers, as cash collateral in an amount up to the amount determined by Agent in its discretion as the amount necessary to secure Administrative Borrower’s and its Subsidiaries’ obligations in respect of the then outstanding Bank Products), and

L. twelfth, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(ii) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.1(i).

(iii) In each instance, so long as no Event of Default has occurred and is continuing, this Section 2.5(b) shall not be deemed to apply to any payment by Borrowers specified by Borrowers to be for the payment of specific Obligations then

due and payable (or prepayable) under any provision of this Agreement.

(iv) For purposes of the foregoing, "paid in full" means payment of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(v) In the event of a direct conflict between the priority provisions of this Section 2.5 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that such priority provisions in such documents shall 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 2.5 shall control and govern.

**2.6 Overadvances.** If, at any time or for any reason, the amount of Obligations owed by Borrowers to the Lender Group pursuant to Sections 2.1 and 2.2 is greater than either the Dollar or percentage limitations set forth in Sections 2.1 and 2.2 (an "Overadvance"), Borrowers immediately shall pay to Agent, in cash, the amount of such excess to be used by Agent to reduce the Obligations pursuant to the terms of Section 2.5(b).

**2.7 Interest and Letter of Credit Fees: Rates, Payments, and Calculations.**

(a) Interest Rate. Except as provided in Section 2.1(b)(iii) or in Section 2.7(c), below, all Obligations shall bear interest on the Daily Balance as follows:

(i) each LIBOR Rate Loan shall bear interest at a per annum rate equal to the Adjusted LIBOR Rate plus the LIBOR Rate Margin; and

(ii) all other Obligations (except for undrawn Letters of Credit) shall bear interest at a per annum rate equal to the Reference Rate.

(b) Letter of Credit Fee. Borrowers shall pay Agent, for the benefit of the Lender Group, a fee equal to 0.75% per annum times the aggregate undrawn amount of all Letters of Credit outstanding as of the end of the day.

(c) Default Rate. Upon the occurrence and during the continuation of an Event of Default, (i) all Obligations (except for undrawn Letters of Credit) shall bear interest on the Daily Balance at a per annum rate equal to 3.00% above the Reference Rate, and (ii) the Letter of Credit fee provided in Section 2.6(b) shall be increased to 3.75% per annum times the aggregate undrawn amount of all outstanding Letters of Credit; provided, however, the foregoing adjustments are subject to waiver by the Required Lenders.

(d) Intentionally Omitted.

(e) Payments. Interest in respect of Reference Rate Loans and Letter of Credit fees payable hereunder shall be due and payable, in arrears, on the first day of each month during the term hereof. Interest in respect of each LIBOR Rate Loan shall be due and payable, in arrears, on (i) the last day of the applicable Interest Period, and (ii) the first day of each month occurring during the term thereof. Each Borrower hereby authorizes Agent, at its option, without prior notice to such Borrower, to charge such interest and Letter of Credit fees, the fees and charges provided for in Section 2.12 (as and when accrued or incurred), and all installments or other payments due under any Loan Document (including the amounts due and payable to the Bank Product Providers in respect to Bank Products up to the amount of the Bank Product Reserve) to Administrative Borrower's Loan Account, which amounts thereafter shall accrue interest at the rate then applicable to Advances hereunder. Any interest not paid when due shall be compounded and shall thereafter accrue interest at the rate then applicable to Advances hereunder.

(f) Computation. In the event the Reference Rate is changed from time to time hereafter, the applicable rate of interest hereunder automatically and immediately shall be increased or decreased by an amount equal to such change in the Reference Rate. All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year for the actual number of days elapsed.

(g) Intent to Limit Charges to Maximum Lawful Rate. In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrowers and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, ipso facto as of the date of this Agreement, Borrowers are and shall be liable only for the payment of such maximum as allowed by law, and payment received from Borrowers in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

**2.8 Collection of Accounts.** Borrower shall at all times maintain lockboxes (the "Lockboxes") and, immediately after the Closing Date, shall instruct all Account Debtors with respect to the Accounts, General Intangibles, and Negotiable Collateral of Borrower to remit all Collections in respect thereof to such Lockboxes. Borrower, Agent, and the Lockbox Banks shall enter into the Lockbox Agreements, which among other things shall provide for the opening of a Lockbox Account for the deposit of

Collections at a Lockbox Bank. Borrower agrees that all Collections and other amounts received by Borrower from any Account Debtor or any other source immediately upon receipt shall be deposited into a Lockbox Account. No Lockbox Agreement or arrangement contemplated thereby shall be modified by Borrower without the prior written consent of Agent. Upon the terms and subject to the conditions set forth in the Lockbox Agreements, all amounts received in each Lockbox Account shall be wired each Business Day into an account (the "Agent's Account") maintained by Agent at a depositary selected by Agent (except as provided in the last sentence of Section 2.9).

**2.9 Crediting Payments; Application of Collections.** The receipt of any Collections by Agent (whether from transfers to Agent by the Lockbox Banks pursuant to the Lockbox Agreements or otherwise) immediately shall be applied provisionally to reduce the Obligations outstanding under Section 2.1, but shall not be considered a payment on account unless such Collection item is a wire transfer of immediately available federal funds and is made to the Agent's Account or unless and until such Collection item is honored when presented for payment. Should any Collection item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment, and interest shall be recalculated accordingly. Anything to the contrary contained herein notwithstanding, any Collection item shall be deemed received by Agent only if it is received into the Agent's Account on a Business Day on or before 11:00 a.m. Boston time. If any Collection item is received into the Agent's Account on a non-Business Day or after 11:00 a.m. Boston time on a Business Day, it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day. Prior to the occurrence of an Event of Default or Agent reasonably deeming itself insecure, and so long as Availability is $25,000,000 or more, at Administrative Borrower’s option, monies shall be transferred from the Lock Box to Agent or to Administrative Borrower's account on a daily basis, and if transferred to Administrative Borrower's account such monies will not be applied to the Obligations.

**2.10 Designated Account.** Agent and the Lender Group are authorized to make the Advances and the Letters of Credit under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person, or without instructions if pursuant to Section 2.7(e). Administrative Borrower agrees to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Advances requested by Administrative Borrower and made by the Lender Group hereunder. Unless otherwise agreed by Agent and Administrative Borrower, any Advance requested by Borrowers and made by the Lender Group hereunder shall be made to the Designated Account.

**2.11 Maintenance of Loan Account; Statements of Obligations.** Agent shall maintain an account on its books in the name of Borrowers (the "Loan Account") on which Borrowers will be charged with all Advances made by the Lender Group to Borrowers or for Borrowers' account, including, accrued interest, Lender Group Expenses, and any other payment Obligations of Borrowers. In accordance with Section 2.9, the Loan Account will be credited with all payments received by Agent from Borrowers or for Borrowers' account, including all amounts received in the Agent's Account from any Lockbox Bank. Agent shall render statements regarding the Loan Account to Administrative Borrower, including principal, interest, fees, and including an itemization of all charges and expenses constituting the Lender Group Expenses owing, and such statements shall be conclusively presumed to be correct and accurate and constitute an account stated between Administrative Borrower and the Lender Group unless, within 30 days after receipt thereof by Administrative Borrower, Borrower shall deliver to Agent written objection thereto describing the error or errors contained in any such statements.

**2.12 Fees.** Borrowers shall pay to Agent for the ratable benefit of the Lender Group (except where otherwise indicated) the following fees:

(a) Increased Commitment Closing Fee. In the amount and as provided in the Fee Letter.

(b) Temporary Overadvance Facility Commitment Fee. In the amount and as provided in the Fee Letter.

(c) Temporary Overadvance Facility Closing Fee. In the amount and as provided in the Fee Letter.

(d) Anniversary Fee. An anniversary fee equal to 0.125% of the Maximum Amount, which fee shall be due and payable in full on each October 31, commencing October 31 2005 through and including October 31, 2007; provided, however, the Agreement has not previously been terminated.

(e) Unused Line Fee. On the first day of each month commencing November 1, 2004, whenever the average Daily Balance of Obligations is less than the Maximum Amount then in effect, an unused line fee in an amount equal to 0.375% per annum times the Average Unused Portion of the Maximum Amount.

(f) Servicing Fee. On the first day of each month during the term of this Agreement, and thereafter so long as any Obligations are outstanding, a servicing fee solely for the Agent in an amount equal to $2,000.

(g) Appraisals; Financial Examination and Appraisal Fees. The Agent or its designee, at the sole expense of Borrowers, shall conduct periodic appraisals of Borrower's Inventory. So long as no Event of Default has occurred and is continuing, Borrowers shall not be liable to pay more than $60,000 per year (exclusive of out of pocket expenses) for financial analyses and examinations and periodic appraisals of Inventory in the aggregate.

**2.13 LIBOR Rate Loans.** Any other provisions herein to the contrary notwithstanding, the following provisions shall govern with respect to LIBOR Rate Loans as to the matters covered:

(a) Borrowing; Conversion; Continuation. Administrative Borrower may from time to time, on or after the Closing Date (and subject to the satisfaction of the requirements of Sections 3.1 and 3.2), request in a written or telephonic communication

with Agent: (i) Advances to constitute LIBOR Rate Loans; (ii) that Reference Rate Loans be converted into LIBOR Rate Loans; or (iii) that existing LIBOR Rate Loans continue for an additional Interest Period. Any such request shall specify the aggregate amount of the requested LIBOR Rate Loans, the proposed funding date therefor (which shall be a Business Day, and with respect to continued LIBOR Rate Loans shall be the last day of the Interest Period of the existing LIBOR Rate Loans being continued), and the proposed Interest Period (in each case subject to the limitations set forth below). LIBOR Rate Loans may only be made, continued, or extended if, as of the proposed funding date therefor, each of the following conditions is satisfied:

(v) no Event of Default exists;

(w) no more than five Interest Periods may be in effect at any one time;

(x) the amount of each LIBOR Rate Loan borrowed, converted, or continued must be in an amount not less than $5,000,000 and integral multiples of $1,000,000 in excess thereof;

(y) Agent shall have determined that the Interest Period or Adjusted LIBOR Rate is available to it and can be readily determined as of the date of the request for such LIBOR Rate Loan by Borrowers; and

(z) Agent shall have received such request at least two Business Days prior to the proposed funding date therefor.

Any request by Administrative Borrower to borrow LIBOR Rate Loans, to convert Reference Rate Loans to LIBOR Rate Loans, or to continue any existing LIBOR Rate Loans shall be irrevocable, except to the extent that any Lender shall determine under Sections 2.13(a), 2.14 or 2.15 that such LIBOR Rate Loans cannot be made or continued.

(b) Determination of Interest Period. By giving notice as set forth in Section 2.12(a), Borrowers shall select an Interest Period for such LIBOR Rate Loan. The determination of the Interest Period shall be subject to the following provisions:

(i) in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the day on which the next preceding Interest Period expires;

(ii) if any Interest Period would otherwise expire on a day which is not a Business Day, the Interest Period shall be extended to expire on the next succeeding Business Day; provided, however, that if the next succeeding Business Day occurs in the following calendar month, then such Interest Period shall expire on the immediately preceding Business Day;

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

(iv) Administrative Borrower may not select an Interest Period which expires later than the date on which this Agreement is scheduled to terminate pursuant to Section 3.4 hereof.

(c) Automatic Conversion: Optional Conversion by Agent. Any LIBOR Rate Loan shall automatically convert to a Reference Rate Loan upon the last day of the applicable Interest Period, unless Agent has received a request to continue such LIBOR Rate Loan at least two Business Days prior to the end of such Interest Period in accordance with the terms of Section 2.13(a). Any LIBOR Rate Loan shall, at Agent's option, upon notice to Borrower, immediately convert to a Reference Rate Loan in the event that (i) an Event of Default shall have occurred and be continuing or (ii) this Agreement shall terminate, and Borrowers shall pay to Agent, for the benefit of the Lenders, any amounts required by Section 2.16 as a result thereof.

**2.14 Illegality.** Any other provision herein to the contrary notwithstanding, if the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by a Governmental Authority made subsequent to the Closing Date shall make it unlawful for any Lender to make or maintain LIBOR Rate Loans as contemplated by this Agreement, (a) the obligation of such Lender hereunder to make LIBOR Rate Loans, continue LIBOR Rate Loans as such, and convert Reference Rate Loans to LIBOR Rate Loans shall forthwith be suspended and (b) such Lender’s then outstanding LIBOR Rate Loans, if any, shall be converted automatically to Reference Rate Loans on the respective last days of the then current Interest Periods with respect thereto or within such earlier period as required by law; provided, however, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions and so long as such efforts would not be disadvantageous to it, in its reasonable discretion, in any legal, economic, or regulatory manner) to designate a different lending office if the making of such a designation would allow such Lender or its lending office to continue to perform its obligations to make LIBOR Rate Loans. If any such conversion of a LIBOR Rate Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, Borrowers shall pay to such Lender such amounts, if any, as may be required pursuant to Section 2.15. If circumstances subsequently change so that such Lender shall determine that it is no longer so affected, such Lender will promptly notify Agent and Administrative Borrower, and upon receipt of such notice, the obligations of such Lender to make or continue LIBOR Rate Loans or to convert Reference Rate Loans into LIBOR Rate Loans shall be reinstated.

**2.15 Requirements of Law.**

(a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by a Governmental Authority made subsequent to the Closing Date or compliance by any Lender with any request or directive (whether

or not having the force of law) from any central bank or other Governmental Authority made subsequent to the Closing Date

(i) shall subject such Lender to any tax, levy, charge, fee, reduction, or withholding of any kind whatsoever with respect to LIBOR Rate Loans, or change the basis of taxation of payments to such Lender in respect thereof (except for the establishment of a tax based on the net income of the Lender or changes in the rate of tax on the net income of such Lender);

(ii) shall in respect of LIBOR Rate Loans impose, modify or hold applicable any reserve, special deposit, compulsory loan, or similar requirement against assets held by, deposits or other liabilities in or for the account of, Advances or other extensions of credit by, or any other acquisition of funds by, any office of such Lender; or

(iii) shall impose on such Lender any other condition with respect to LIBOR Rate Loans;

and the result of any of the foregoing is to increase the cost to such Lender, by an amount which such Lender deems to be material, of making, converting into, continuing, or maintaining LIBOR Rate Loans or to increase the cost to such Lender in respect of LIBOR Rate Loans, by an amount which such Lender deems to be material, or to reduce any amount receivable hereunder in respect of LIBOR Rate Loans, or to forego any other sum payable thereunder or make any payment on account thereof in respect of LIBOR Rate Loans, then, in any such case, Borrowers shall promptly pay to Agent (for the benefit of such Lender), upon such Lender's demand, any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable; provided, however, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions and so long as such efforts would not be disadvantageous to it, in its reasonable discretion, in any legal, economic, or regulatory manner) to designate a different LIBOR lending office if the making of such designation would allow such Lender or its LIBOR lending office to continue to perform its obligations to make LIBOR Rate Loans or to continue to fund or maintain LIBOR Rate Loans and avoid the need for, or materially reduce the amount of, such increased cost. If a Lender becomes entitled to claim any additional amounts pursuant to this Section 2.15, such Lender shall promptly notify Agent and Administrative Borrower of the event by reason of which it has become so entitled. A certificate as to any additional amounts payable pursuant to this Section 2.15 submitted in reasonable detail by such Lender to Agent and Administrative Borrower shall be conclusive in the absence of manifest error. Within five Business Days after a Lender notifies Agent and Administrative Borrower of any increased cost pursuant to the foregoing provisions of this Section 2.15, Administrative Borrower may convert all LIBOR Rate Loans then outstanding into Reference Rate Loans in accordance with Section 2.13 and, additionally, reimburse such Lender for any cost in accordance with Section 2.16. This covenant shall survive the termination of this Agreement and the payment of the Advances and all other amounts payable hereunder for nine months following such termination and repayment.

(b) If a Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof by a Governmental Authority made subsequent to the Closing Date or compliance by such Lender or any Person controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the Closing Date does or shall have the effect of increasing the amount of capital required to be maintained or reducing the rate of return on such Lender's or such Person's capital as a consequence of its obligations hereunder to a level below that which such Lender or such Person could have achieved but for such change or compliance (taking into consideration such Lender's or such Person's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to Agent and Administrative Borrower of a prompt written request therefor, Borrowers shall pay to Agent (for the benefit of such Lender) such additional amount or amounts as will compensate such Lender or such Person for such reduction. This covenant shall survive the termination of this Agreement and the payment of the Advances and all other amounts payable hereunder for nine months following such termination and repayment.

**2.16 Indemnity.** Each Borrower agrees to indemnify Agent and each Lender and to hold Agent and each Lender harmless from any loss or expense which Agent and each Lender may sustain or incur as a consequence of (a) default by Borrowers in payment when due of the principal amount of or interest on any LIBOR Rate Loan, (b) default by Borrowers in making a Borrowing of, conversion into, or continuation of LIBOR Rate Loans after Administrative Borrower have given a notice requesting the same in accordance with the provisions of this Agreement, (c) default by Borrowers in making any prepayment of a LIBOR Rate Loan after Administrative Borrower has given a notice thereof in accordance with the provisions of this Agreement, or (d) the making of a prepayment of LIBOR Rate Loans on a day which is not the last day of an Interest Period with respect thereto (whether due to the termination of this Agreement, upon an Event of Default, or otherwise), including, in each case, any such loss or expense (but excluding loss of margin or anticipated profits) arising from the reemployment of funds obtained by it or from fees payable to terminate the deposits from which such funds were obtained; provided, however, that Agent or any Lender, if requesting indemnification, shall have delivered to the Borrowers a certificate as to the amount of such loss or expense, which certificate shall be conclusive in the absence of manifest error. Calculation of all amounts payable to Agent or any such Lender under this Section 2.16 shall be made as though such Lender had actually funded the relevant LIBOR Rate Loan through the purchase of a deposit bearing interest at the LIBOR Rate in an amount equal to the amount of such LIBOR Rate Loan and having a maturity comparable to the relevant Interest Period; provided, however, that each Lender may fund each of the LIBOR Rate Loans in any manner it sees fit, and the foregoing assumption shall be utilized only for the calculation of amounts payable under this Section 2.16. This covenant shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder for a period of nine months thereafter.

**2.17 Joint and Several Liability of Borrowers.**

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Agent and the Lenders under this Agreement, for the mutual

benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 2.17), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Person composing Borrowers without preferences or distinction among them.

(c) If and to the extent that any of Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Persons composing Borrowers will make such payment with respect to, or perform, such Obligation.

(d) The Obligations of each Person composing Borrowers under the provisions of this Section 2.17 constitute the absolute and unconditional, full recourse Obligations of each Person composing Borrowers enforceable against each such Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.

(e) Except as otherwise expressly provided in this Agreement, each Person composing Borrowers hereby waives notice of acceptance of its joint and several liability, notice of any Advances or Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Person composing Borrowers hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Person composing Borrowers in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Person composing Borrowers. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Person composing Borrowers to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.17 afford grounds for terminating, discharging or relieving any Person composing Borrowers, in whole or in part, from any of its Obligations under this Section 2.17, it being the intention of each Person composing Borrowers that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of such Person composing Borrowers under this Section 2.17 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Person composing Borrowers under this Section 2.17 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Person composing Borrowers or any Agent or Lender. The joint and several liability of the Persons composing Borrowers hereunder shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, constitution or place of formation of any of the Persons composing Borrowers or any Agent or Lender.

(f) Each Person composing Borrowers represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Person composing Borrowers further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Person composing Borrowers hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition, the financial condition of other guarantors, if any, and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) The provisions of this Section 2.17 are made for the benefit of the Agent, the Lenders and their respective successors and assigns, and may be enforced by it or them from time to time against any or all of the Persons composing Borrowers as often as occasion therefor may arise and without requirement on the part of any such Agent, Lender, successor or assign first to marshal any of its or their claims or to exercise any of its or their rights against any of the other Persons composing Borrowers or to exhaust any remedies available to it or them against any of the other Persons composing Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.17 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by any Agent or Lender upon the insolvency, bankruptcy or reorganization of any of the Persons composing Borrowers, or otherwise, the provisions of this Section 2.17 will forthwith be reinstated in effect, as though such payment had not been made.

(h) Each of the Persons composing Borrowers hereby agrees that it will not enforce any of its rights of contribution or subrogation against the other Persons composing Borrowers with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Agent or the Lenders with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to any Agent or Lender hereunder or under any other Loan

Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor.

(i) Each of the Persons composing Borrowers hereby agrees that, after the occurrence and during the continuance of any Default or Event of Default, the payment of any amounts due with respect to the indebtedness owing by any Borrower to any other Borrower is hereby subordinated to the prior payment in full in cash of the Obligations. Each Borrower hereby agrees that after the occurrence and during the continuance of any Default or Event of Default, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness of any other Borrower owing to such Borrower until the Obligations shall have been paid in full in cash. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Borrower as trustee for the Agent, and such Borrower shall deliver any such amounts to Agent for application to the Obligations in accordance with Section 2.5(b).

**3. CONDITIONS; TERM OF AGREEMENT.**

**3.1 Conditions Precedent to the Initial Advance and the Initial Letter of Credit**. The obligation of the Lender Group to make the initial Advance and to issue the initial Letter of Credit is subject to the fulfillment, to the satisfaction of Agent and its counsel, of each of the following conditions on or before the Closing Date:

(a) the Closing Date shall occur on or before February 15, 2005;

(b) Agent shall have received and filed amendments to its financing statements;

(c) Agent shall have received the Guaranties, duly executed, and each such document shall be in full force and effect.

(d) Agent shall have received a certificate from the Secretary of each Borrower attesting to the resolutions of such Borrower's Board of Directors authorizing its execution, delivery, and performance of this Agreement and the other Loan Documents to which such Borrower is a party and authorizing specific officers of such Borrower to execute the same;

(e) Agent shall have received copies of each Borrower's Governing Documents, as amended, modified, or supplemented to the Closing Date, certified by the Secretary of each Borrower;

(f) Agent shall have received a certificate of status with respect to each Borrower, dated within 10 days of the Closing Date, such certificate to be issued by the appropriate officer of the jurisdiction of organization of each Borrower, which certificate shall indicate that such Borrower is in good standing in such jurisdiction;

(g) Agent shall have received a certificate of insurance, together with the endorsements thereto, as are required by Section 6.9, the form and substance of which shall be satisfactory to Agent and its counsel;

(h) Agent shall have received an opinion of Borrowers' counsel in form and substance satisfactory to Agent in its sole discretion;

(i) all other documents and legal matters in connection with the transactions contemplated by this Agreement shall have been delivered, executed, or recorded and shall be in form and substance satisfactory to Agent and its counsel.

**3.2 Conditions Precedent to all Advances and all Letters of Credit**. The following shall be conditions precedent to all Advances and all Letters of Credit hereunder:

(a) the representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date);

(b) except for good faith disputes between a Borrower and landlords, no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof;

(c) 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, the Lender Group or any of their Affiliates;

(d) the amount of any requested Advance or Letter of Credit shall not exceed Availability at such time; and

(e) with respect to Advances under the Temporary Overadvance Facility, (i) receipt and satisfactory review by the Agent, in the Agent's sole and exclusive discretion, of the definitive Disney License Agreement and confirmation that the Disney License Agreement is in full force and effect, and (ii) confirmation by the Agent that all Conditions Precedent (Article 3) of the Loan and Security Agreement to be entered into by the Agent and the Lenders party thereto with The Disney Stores, LLC have been satisfied.

**3.3 Intentionally Omitted.**

**3.4 Term; Automatic Renewal**. This Agreement shall become effective as of October 31, 2004 upon the execution and delivery hereof by Borrower and the Lender Group and shall continue in full force and effect for a term ending on November 1, 2007 (the "Renewal Date") and automatically shall be renewed for successive one year periods thereafter, unless sooner terminated pursuant to the terms hereof. Either Administrative Borrower or Agent (on behalf of the Lender Group) may terminate this Agreement effective on the Renewal Date or on any year anniversary of the Renewal Date by giving the other party at least 90 days prior written notice. The foregoing notwithstanding, Agent (on behalf of the Lender Group) shall have the right to terminate the Lender Group's obligations under this Agreement immediately and without notice upon the occurrence and during the continuation of an Event of Default.

**3.5 Effect of Termination.** On the date of termination of this Agreement, all Obligations (including contingent reimbursement obligations of Borrowers with respect to any outstanding Letters of Credit and including Bank Product Obligations) immediately shall become due and payable without notice or demand. No termination of this Agreement, however, shall relieve or discharge Borrowers of Borrowers' duties, Obligations, or covenants hereunder, and the Lender Group's continuing security interests in the Collateral shall remain in effect until all Obligations have been fully and finally discharged and the Lender Group's obligation to provide additional credit hereunder is terminated.

**3.6 Early Termination by Borrowers**. Borrowers have the option, at any time upon 90 days prior written notice to Agent, to terminate this Agreement by paying to Agent, for the benefit of the Lender Group, in cash, the Obligations (including either (a) providing cash collateral to be held by Agent for the benefit of those Lenders with a Commitment in an amount equal to 105% of the then outstanding Letters of Credit, or (b) causing the outstanding original Letters of Credit to be returned to the issuer thereof, in full, together with the Applicable Prepayment Premium (to be allocated based upon letter agreements between Agent and individual Lenders). If Administrative Borrower has sent a notice of termination pursuant to the provisions of this Section, then the Commitments shall terminate and Borrowers shall be obligated to repay the Obligations (including either (i) providing cash collateral to be held by Agent for the benefit of those Lenders with a Commitment in an amount equal to 105% of the then outstanding Letters of Credit, or (ii) causing the original Letters of Credit to be returned to the issuer thereof, in full, together with the Applicable Prepayment Premium, on the date set forth as the date of termination of this Agreement in such notice. In the event of the termination of this Agreement and repayment of the Obligations at any time prior to the date on which this Agreement is scheduled to terminate pursuant to Section 3.4 hereof, for any other reason, including (a) foreclosure and sale of Collateral, (b) sale of the Collateral in any Insolvency Proceeding, or (c) restructure, reorganization, or compromise of the Obligations by the confirmation of a plan of reorganization or any other plan of compromise, restructure, or arrangement in any Insolvency Proceeding, then, in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Lender Group or profits lost by the Lender Group as a result of such early termination, and by mutual agreement of the parties as to a reasonable estimation and calculation of the lost profits or damages of the Lender Group, Borrower shall pay the Applicable Prepayment Premium to Agent (to be allocated based upon letter agreements between Agent and individual Lenders), measured as of the date of such termination.

**4. CREATION OF SECURITY INTEREST.**

**4.1 Grant of Security Interests**. Each Borrower hereby grants to Agent for the benefit of the Lender Group a continuing security interest in all currently existing and hereafter acquired or arising Collateral in order to secure prompt repayment of any and all Obligations and in order to secure prompt performance by such Borrower of each of its covenants and duties under the Loan Documents. The security interests of Agent for the benefit of the Lender Group in the Collateral shall attach to all Collateral without further act on the part of the Lender Group or Borrower. Anything contained in this Agreement or any other Loan Document to the contrary notwithstanding, and other than: (a) sales of Inventory to buyers in the ordinary course of business, (b) sales of Equipment in any 12 month period having an aggregate net book value of $500,000 with the proceeds being applied to the Obligations, and (c) sale or disposal of Collateral (other than Inventory) in connection with the closing of Borrowers' stores, Borrowers have no authority, express or implied, to dispose of any item or portion of the Collateral.

**4.2 Negotiable Collateral.** In the event that any Collateral, including proceeds, is evidenced by or consists of Negotiable Collateral, Borrowers, immediately upon the request of Agent, shall endorse and deliver physical possession of such Negotiable Collateral to Agent.

**4.3 Collection of Accounts, General Intangibles, and Negotiable Collateral**. At any time, Agent or Agent's designee may (a) notify customers or Account Debtors of any Borrower that the Accounts, General Intangibles, or Negotiable Collateral have been assigned to Agent for the benefit of the Lender Group or that Agent for the benefit of the Lender Group has a security interest therein, and (b) collect the Accounts, General Intangibles, and Negotiable Collateral directly and charge the collection costs and expenses to the Loan Account. Each Borrower agrees that, subject to Section 2.9, it will hold in trust for the Lender Group, as the Lender Group's trustee, any Collections that it receives and immediately will deliver said Collections to Agent in their original form as received by such Borrower.

**4.4 Delivery of Additional Documentation Required**. At any time upon the request of Agent, Borrowers shall execute and deliver to Agent all financing statements, continuation financing statements, fixture filings, security agreements, pledges, assignments, control agreements, endorsements of certificates of title, applications for title, affidavits, reports, notices, schedules of accounts, letters of authority, and all other documents that Agent reasonably may request, in form satisfactory to Agent, to perfect and continue perfected the Liens of the Lender Group in the Collateral, and in order to fully consummate all of the transactions contemplated hereby and under the other the Loan Documents.

**4.5 Power of Attorney**. Each Borrower hereby irrevocably makes, constitutes, and appoints Agent (and any of Agent's officers, employees, or agents designated by Agent) as such Borrower's true and lawful attorney, with power to (a) if any Borrower refuses to, or fails timely to execute and deliver any of the documents described in Section 4.4, sign the name of such Borrower on any of the documents described in Section 4.4, (b) at any time that an Event of Default has occurred and is continuing or the Lender Group deems itself insecure, sign such Borrower's name on any invoice or bill of lading relating to any Account, drafts against Account Debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to Account Debtors, (c) send requests for verification of Accounts, (d) endorse such Borrower's name on any Collection item that may come into the Lender Group's possession, (e) at any time that an Event of Default has occurred and is continuing or the Lender Group deems itself insecure, notify the post office authorities to change the address for delivery of such Borrower's mail to an address designated by Agent, to receive and open all mail addressed to such Borrower, and to retain all mail relating to the Collateral and forward all other mail to such Borrower, (f) at any time that an Event of Default has occurred and is continuing or the Lender Group deems itself insecure, make, settle, and adjust all claims under Borrowers' policies of insurance and make all determinations and decisions with respect to such policies of insurance, and (g) at any time that an Event of Default has occurred and is continuing or Agent deems itself insecure, settle and adjust disputes and claims respecting the Accounts directly with Account Debtors, for amounts and upon terms that Agent determines to be reasonable, and Agent may cause to be executed and delivered any documents and releases that Agent determines to be necessary. The appointment of Agent as each Borrower's attorney, and each and every one of Agent's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully and finally repaid and performed and the Lender Group's obligation to extend credit hereunder is terminated.

**4.6 Right to Inspect**. Agent (through any of its officers, employees, or agents), shall have the right, from time to time hereafter to inspect Books and to check, test, and appraise the Collateral in order to verify Borrowers' financial condition or the amount, quality, value, condition of, or any other matter relating to, the Collateral.

**5. REPRESENTATIONS AND WARRANTIES**. In order to induce the Lender Group to enter into this Agreement, each Borrower makes the following representations and warranties which shall be true, correct, and complete in all respects as of the date hereof, and shall be true, correct, and complete in all respects as of the Closing Date, and at and as of the date of the making of each Advance and Letter of Credit made thereafter, as though made on and as of the date of such Advance and Letter of Credit (except to the extent that such representations and warranties relate solely to an earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

**5.1 No Encumbrances**. Each Borrower has good and indefeasible title to the Collateral, free and clear of Liens except for Permitted Liens.

**5.2 Eligible Accounts**. The Eligible Accounts are, at the time of the creation thereof and as of each date on which Borrowers includes them in a Borrowing Base calculation or certification, bona fide existing obligations created by the sale and delivery of Inventory or the rendition of services to Account Debtors in the ordinary course of Borrowers' business, unconditionally owed to Borrowers without defenses, disputes, offsets, counterclaims, or rights of return or cancellation other than normal returns or disputes in the normal course of business. The property giving rise to such Eligible Accounts has been delivered to the Account Debtor, or to the Account Debtor's agent for immediate shipment to and unconditional acceptance by the Account Debtor. At the time of the creation of an Eligible Account and as of each date on which Borrower includes an Eligible Account in a Borrowing Base calculation or certification, Borrower has not received notice of actual or imminent bankruptcy, insolvency, or material impairment of the financial condition of any applicable Account Debtor regarding such Eligible Account.

**5.3 Eligible Inventory**. All Eligible Inventory is now and at all times hereafter shall be of good and merchantable quality, free from defects, except for minor defects arising in the ordinary course of business.

**5.4 Equipment**. All of the Equipment is used or held for use in Borrowers' business and is fit for such purposes.

**5.5 Location of Inventory and Equipment**. The Inventory (other than Inventory in transit) and Equipment are not stored with a bailee, warehouseman, or similar party (without Agent's prior written consent) and are located only at the locations identified on Schedule 6.11 or otherwise permitted by Section 6.11.

**5.6 Inventory Records**. Each Borrower keeps correct and accurate records itemizing and describing the kind, type, quality and quantity of its Inventory and each Borrower’s cost therefor in accordance with the retail method of accounting.

**5.7 Location of Chief Executive Office; FEIN**. The chief executive office of Borrower is located at the address indicated in the preamble to this Agreement and Parent’s FEIN is 31-1241495 and Services Company’s FEIN is 20-0850965.

**5.8 Due Organization and Qualification; Subsidiaries.**

(a) Each Borrower is duly organized and existing and in good standing under the laws of the jurisdiction of its incorporation and qualified and licensed to do business in, and in good standing in, any state where the failure to be so licensed or qualified reasonably could be expected to cause a Material Adverse Change.

(b) Set forth on Schedule 5.8, is a complete and accurate list of each Borrower's direct and indirect Subsidiaries, showing: (i) the jurisdiction of their incorporation; (ii) the number of shares of each class of common and preferred stock authorized for each of such Subsidiaries; and (iii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by the applicable Borrower. All of the outstanding capital stock of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(c) Except as set forth on Schedule 5.8, no capital stock (or any securities, instruments, warrants, options, purchase rights, conversion or exchange rights, calls, commitments or claims of any character convertible into or exercisable for capital stock) of any direct or indirect Subsidiary of Borrower is subject to the issuance of any security, instrument, warrant, option, purchase right, conversion or exchange right, call, commitment or claim of any right, title, or interest therein or thereto.

**5.9 Due Authorization; No Conflict.**

Each Borrower is duly organized and existing and in good standing under the laws of the state of its incorporation and qualified and licensed to do business in, and in good standing in, any state where the failure to be so licensed or qualified could reasonably be expected to have a material adverse effect on the business, operations, condition (financial or otherwise), finances, or prospects of Borrower or on the value of the Collateral to Agent.

**5.10 Litigation**. There are no actions or proceedings pending by or against Borrowers before any court or administrative agency and Borrowers do not have knowledge or belief of any pending, threatened, or imminent litigation, governmental investigations, or claims, complaints, actions, or prosecutions involving Borrowers or any guarantor of the Obligations, except for: (a) ongoing collection matters in which Borrowers are the plaintiff; and (b) current matters that, if decided adversely to Borrowers, would not materially impair the prospect of repayment of the Obligations or materially impair the value or priority of the Lender Group's security interests in the Collateral.

**5.11 No Material Adverse Change**. All financial statements relating to Borrowers or any guarantor of the Obligations that have been delivered by Borrowers to the Lender Group have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and fairly present Borrowers' (or such guarantor's, as applicable) financial condition as of the date thereof and Borrowers' results of operations for the period then ended. There has not been a Material Adverse Change with respect to Borrowers (or such guarantor, as applicable) since the date of the latest financial statements submitted to the Lender Group on or before the Closing Date.

**5.12 Fraudulent Transfer.**

(a) Each Borrower and each Subsidiary of a Borrower is Solvent.

(b) No transfer of property is being made by any Borrower or any Subsidiary of a Borrower and no obligation is being incurred by any Borrower or any Subsidiary of a Borrower 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 Borrowers or their Subsidiaries.

**5.13 Employee Benefits**. None of any Borrower, any of its Subsidiaries, or any of their ERISA Affiliates maintains or contributes to any Benefit Plan, other than those listed on Schedule 5.13. Each Borrower, each of its Subsidiaries and each ERISA Affiliate have satisfied the minimum funding standards of ERISA and the IRC with respect to each Benefit Plan to which it is obligated to contribute. No ERISA Event has occurred nor has any other event occurred that may result in an ERISA Event that reasonably could be expected to result in a Material Adverse Change. Borrower or its Subsidiaries, any ERISA Affiliate, or any fiduciary of any Plan is subject to any direct or indirect liability with respect to any Plan under any applicable law, treaty, rule, regulation, or agreement. No Borrower or its Subsidiaries or any ERISA Affiliate is required to provide security to any Plan under Section 401(a)(29) of the IRC.

**5.14 Environmental Condition**. Except as set forth on Schedule 5.14, none of Borrowers' properties or assets has ever been used by Borrowers or, to the best of Borrowers' knowledge, by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials. None of Borrowers' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, or a candidate for closure pursuant to any environmental protection statute. No lien arising under any environmental protection statute has attached to any revenues or to any real or personal property owned or operated by Borrowers. Borrowers have not received a summons, citation, notice, or directive from the Environmental Protection Agency or any other federal or state governmental agency concerning any action or omission by Borrowers resulting in the releasing or disposing of Hazardous Materials into the environment.

**6. AFFIRMATIVE COVENANTS.** Each Borrower covenants and agrees that, so long as any credit hereunder shall be available and until full and final payment of the Obligations, Borrowers shall do all of the following:

**6.1 Accounting System and Schedules.**

(a) Maintain a standard and modern system of accounting in accordance with GAAP with ledger and account cards or computer tapes, discs, printouts, and records pertaining to the Collateral which contain information as from time to time may be requested by Agent. Borrowers also shall keep proper books of account showing all sales, claims, and allowances on its Inventory.

(b) Schedules of Accounts. With such regularity as Agent shall require, Borrowers shall provide Agent with schedules describing all Accounts. Agent's failure to request such schedules or Borrowers' failure to execute and deliver such schedules shall not affect or limit the Lender Group's security interests or other rights in and to the Accounts.

**6.2 Financial Statements, Reports, Certificates**. Deliver to Agent. (a) as soon as available, but in any event within 30 days after the end of each month (or 45 days after the end of fiscal quarter) during each of Parent's fiscal years, a company prepared

balance sheet, income statement, and cash flow statement covering Parent's operations during such period; and (b) as soon as available, but in any event within 90 days after the end of each of Parent's Fiscal Years, financial statements of Parent for each such Fiscal Year, audited by independent certified public accountants reasonably acceptable to Agent and certified, without any going concern or other material qualifications, by such accountants to have been prepared in accordance with GAAP, together with a certificate of such accountants addressed to Agent stating that such accountants do not have knowledge of the existence of any failure of Parent to comply with Section 7.20. Such audited financial statements shall include a balance sheet, profit and loss statement, and cash flow statement, and, if prepared, such accountants' letter to management. If Parent is a parent company of one or more Subsidiaries, or Affiliates, or is a Subsidiary or Affiliate of another company, then, in addition to the financial statements referred to above, Parent agrees to deliver financial statements prepared on a consolidating basis so as to present Parent and each such related entity separately, and on a consolidated basis.

Together with the above, Parent also shall deliver to Lenders Parent's Form 10-Q Quarterly Reports, Form 10-K Annual Reports, and Form 8-K Current Reports, and any other filings made by Parent with the Securities and Exchange Commission, if any, as soon as the same are filed, or any other information that is provided by Parent to its public shareholders, and any other report reasonably requested by Agent relating to the Collateral and financial condition of Parent.

Each month, together with the financial statements provided pursuant to Section 6.2(a), Administrative Borrower shall deliver to Agent a certificate signed by its chief financial officer to the effect that: (i) all reports, statements, or computer prepared information of any kind or nature delivered or caused to be delivered to Agent hereunder have been prepared in accordance with GAAP and fairly present the financial condition of Borrowers; (ii) Borrowers are in timely compliance with all of its covenants and agreements hereunder; (iii) the representations and warranties of Borrowers contained in this Agreement and the other Loan Documents are true and correct in all material respects on and as of the date of such certificate, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date); and (iv) on the date of delivery of such certificate to Agent there does not exist any condition or event that constitutes an Event of Default (or, in each case, to the extent of any non-compliance, describing such non-compliance as to which he or she may have knowledge and what action Borrowers have taken, is taking, or proposes to take with respect thereto).

Administrative Borrower shall deliver to Agent its Business Plan for each fiscal year commencing on or about February 1 on or before March 1 of such fiscal year.

Administrative Borrower shall have issued written instructions to its independent certified public accountants authorizing them to communicate with Agent and to release to Agent whatever financial information concerning Borrowers that Agent may request. Administrative Borrower hereby irrevocably authorizes and directs all auditors, accountants, or other third parties to deliver to Agent, at Borrowers' expense, copies of Borrowers' financial statements, papers related thereto, and other accounting records of any nature in their possession, and to disclose to Agent any information they may have regarding the Collateral or the financial condition of Borrowers.

**6.3 Tax Returns.** Deliver to Agent copies of each of Parent's future federal income tax returns, and any amendments thereto, concurrently with the filing thereof with the Internal Revenue Service.

**6.4 Designation of Inventory.** Borrowers shall now and from time to time hereafter, but not less frequently than weekly (or monthly so long as Borrowers have maintained at least $25,000,000 of Availability without being limited by the Maximum Amount) (to be delivered each Monday based upon the close of business on the preceding Saturday), execute and deliver to Agent a designation of Inventory specifying the retail selling price of Borrowers' Inventory, and not less frequently than monthly, execute and deliver to Agent a designation of Inventory specifying Borrowers' Cost, and further specifying such other information as Agent may reasonably request. Such designation shall separately report Inventory that is subject to a letter of credit issued by any Person other than Agent. Borrowers will not include Inventory in transit in its Inventory reports until such Inventory has been paid for by draws under applicable letters of credit or has been acquired by Borrowers without letter of credit financing.

**6.5 Store Openings and Closings and Rents Reports.** Borrowers shall give Agent reasonable prior notice of new store openings and closing of its stores. Borrowers shall make timely payment of all rents on real property leases where Borrower is the lessee within applicable grace periods, and shall provide Agent with a monthly report specifying the status of such payments. In the event that Borrowers become delinquent in their rent payments, then Agent can establish reserves against the Borrowing Base for the amount of any landlord liens arising from such delinquency.

**6.6 Title to Equipment**. Upon Agent's request, Borrowers shall within 30 days of such request deliver to Agent, properly endorsed, any and all evidences of ownership of, certificates of title, or applications for title to any items of Equipment with a market value of $100,000 or more other than Equipment leased or to be leased.

**6.7 Maintenance of Equipment**. Maintain the Equipment in good operating condition and repair (ordinary wear and tear excepted), and make all necessary replacements thereto so that the value and operating efficiency thereof shall at all times be maintained and preserved. Other than those items of Equipment that constitute fixtures on the Closing Date, Borrower shall not permit any item of Equipment to become a fixture to real estate or an accession to other property, and such Equipment shall at all times remain personal property.

**6.8 Taxes**. Cause all assessments and taxes, whether real, personal, or otherwise, due or payable by, or imposed, levied, or assessed against Borrowers, their Subsidiaries, or any of their property to be paid in full, before delinquency or before the expiration of any extension period, except to the extent that the validity of such assessment or tax shall be the subject of a Permitted Protest. Borrowers shall make due and timely payment or deposit of all such federal, state, and local taxes, assessments, or

contributions required of it by law, and will execute and deliver to Agent, on demand, appropriate certificates attesting to the payment thereof or deposit with respect thereto. Borrowers will make timely payment or deposit of all tax payments and withholding taxes required of it by applicable laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Agent with proof satisfactory to Agent indicating that Borrowers have made such payments or deposits.

**6.9 Insurance.**

(a) Borrowers, at their expense, shall keep the Collateral insured against loss or damage by fire, theft, explosion, sprinklers, and all other hazards and risks, and in such amounts, as are ordinarily insured against by other owners in similar businesses. Borrowers also shall maintain business interruption, public liability, product liability, and property damage insurance relating to Borrowers' ownership and use of the Collateral, as well as insurance against larceny, embezzlement, and criminal misappropriation.

(b) All such policies of insurance shall be in such form, with such companies, and in such amounts as may be reasonably satisfactory to Agent. All such policies of insurance (except those of public liability and property damage) shall contain a 438BFU lender's loss payable endorsement, or an equivalent endorsement in a form satisfactory to Agent, showing Agent as sole loss payee thereof, and shall contain a waiver of warranties, and shall specify that the insurer must give at least 10 days prior written notice to Agent before canceling its policy for any reason. Administrative Borrower shall deliver to Agent certified copies of such policies of insurance and evidence of the payment of all premiums therefor. All proceeds payable under any such policy shall be payable to Agent to be applied on account of the Obligations.

**6.10 No Setoffs or Counterclaims**. Make payments hereunder and under the other Loan Documents by or on behalf of Borrowers without setoff or counterclaim and free and clear of, and without deduction or withholding for or on account of, any federal, state, or local taxes.

**6.11 Location of Inventory and Equipment**. Keep the Inventory (other than Inventory in transit) and Equipment only at the locations identified on Schedule 6.11; provided, however, that Borrowers may amend Schedule 6.11 so long as such amendment occurs by written notice to Agent not less than 30 days prior to the date on which the Inventory or Equipment is moved to such new location, so long as such new location is within the continental United States, Alaska, Hawaii or Puerto Rico, and so long as, at the time of such written notification, Borrowers provide any financing statements necessary to perfect and continue perfected the Lien of Agent for the benefit of the Lender Group in such assets, and Borrowers will use their best efforts to obtain a Collateral Access Agreement if requested by Agent.

**6.12 Compliance with Laws**. Comply with the requirements of all applicable laws, rules, regulations, and orders of any governmental authority, including the Fair Labor Standards Act and the Americans With Disabilities Act, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, would not have and could not reasonably be expected to cause a Material Adverse Change.

**6.13 Employee Benefits**. (a) Deliver to Agent: (i) promptly, and in any event within 10 Business Days after Parent or any of its Subsidiaries knows or has reason to know that an ERISA Event has occurred that reasonably could be expected to result in a Material Adverse Change, a written statement of the chief financial officer of Parent describing such ERISA Event and any action that is being taking with respect thereto by Parent, any such Subsidiary or ERISA Affiliate, and any action taken or threatened by the IRS, Department of Labor, or PBGC. Parent or such Subsidiary, as applicable, shall be deemed to know all facts known by the administrator of any Benefit Plan of which it is the plan sponsor, (ii) promptly, and in any event within three Business Days after the filing thereof with the IRS, a copy of each funding waiver request filed with respect to any Benefit Plan and all communications received by Parent, any of its Subsidiaries or, to the knowledge of Parent, any ERISA Affiliate with respect to such request, and (iii) promptly, and in any event within three Business Days after receipt by Parent, any of its Subsidiaries or, to the knowledge of Parent, any ERISA Affiliate, of the PBGC's intention to terminate a Benefit Plan or to have a trustee appointed to administer a Benefit Plan, copies of each such notice.

(b) Cause to be delivered to Agent, upon Agent's request, each of the following: (i) a copy of each Plan (or, where any such plan is not in writing, complete description thereof) (and if applicable, related trust agreements or other funding instruments) and all amendments thereto, all written interpretations thereof and written descriptions thereof that have been distributed to employees or former employees of Parent or its Subsidiaries; (ii) the most recent determination letter issued by the IRS with respect to each Benefit Plan; (iii) for the three most recent plan years, annual reports on Form 5500 Series required to be filed with any governmental agency for each Benefit Plan; (iv) all actuarial reports prepared for the last three plan years for each Benefit Plan; (v) a listing of all Multiemployer Plans, with the aggregate amount of the most recent annual contributions required to be made by Parent or any ERISA Affiliate to each such plan and copies of the collective bargaining agreements requiring such contributions; (vi) any information that has been provided to Parent or any ERISA Affiliate regarding withdrawal liability under any Multiemployer Plan; and (vii) the aggregate amount of the most recent annual payments made to former employees of Parent or its Subsidiaries under any Retiree Health Plan.

**6.14 Leases**. Pay when due all rents and other amounts payable under any leases to which Parent is a party or by which Borrowers' properties and assets are bound, unless such payments are the subject of a Permitted Protest. To the extent that Borrowers fail timely to make payment of such rents and other amounts payable when due under their leases, Agent shall be entitled, in its discretion, to reserve an amount equal to such unpaid amounts against the Borrowing Base.

**7. NEGATIVE COVENANTS**. Each Borrower covenants and agrees that, so long as any credit hereunder shall be available and until full and final payment of the Obligations, Borrowers will not do any of the following:

**7.1 Indebtedness** Create, incur, assume, permit, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except:

(a) Indebtedness evidenced by this Agreement, together with Indebtedness to issuers of letters of credit that is the subject of L/C Guarantees;

(b) Indebtedness set forth in Schedule 7.1;

(c) Indebtedness secured by Permitted Liens;

(d) refinancings, renewals, or extensions of Indebtedness permitted under clauses (b) and (c) of this Section 7.1 (and continuance or renewal of any Permitted Liens associated therewith) so long as: (i) the terms and conditions of such refinancings, renewals, or extensions do not materially impair the prospects of repayment of the Obligations by Borrowers, (ii) the net cash proceeds of such refinancings, renewals, or extensions do not result in an increase in the aggregate principal amount of the Indebtedness so refinanced, renewed, or extended, (iii) such refinancings, renewals, refundings, or extensions do not result in a shortening of the average weighted maturity of the Indebtedness so refinanced, renewed, or extended, and (iv) to the extent that Indebtedness that is refinanced was subordinated in right of payment to the Obligations, then the subordination terms and conditions of the refinancing Indebtedness must be at least as favorable to the Lender Group as those applicable to the refinanced Indebtedness;

(e) leases, whether operating leases or capital leases of existing or after acquired Equipment;

(f) Indebtedness subordinated to the Obligations on terms and conditions satisfactory to Agent; and

(g) Indebtedness incurred in connection with the Disney Stores Acquisition, as more particularly set forth on Schedule 7.1, annexed hereto.

**7.2 Liens**. Create, incur, assume, or permit to exist, directly or indirectly, any Lien on or with respect to any of its property or assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens (including Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is refinanced under Section 7.1(d) and so long as the replacement Liens only encumber those assets or property that secured the original Indebtedness).

**7.3 Restrictions on Fundamental Changes**. Without Required Lenders' prior written consent, enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its capital stock, or liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, assign, lease, transfer, or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its property or assets; provided that the foregoing shall not prohibit the Restructuring Transaction.

**7.4 Disposal of Assets**. Sell, lease, assign, transfer, or otherwise dispose of any material portion of Borrowers' properties or assets other than sales of (a) Inventory to buyers in the ordinary course of Borrowers' business as currently conducted and (b) Equipment having a fair market value, in the aggregate, of up to $500,000 in any Fiscal Year.

**7.5 Change Name**. Change any Borrower's name, FEIN, corporate structure (within the meaning of Section 9402(7) of the Code), state or organization or identity, or add any new fictitious name.

**7.6 Guarantee**. Guarantee or otherwise become in any way liable with respect to the obligations of any third Person except (i) by endorsement of instruments or items of payment for deposit to the account of Borrowers or which are transmitted or turned over to Agent; (ii) guarantee and indemnification obligations to the Walt Disney Companies in accordance with the Acquisition Agreement and the TCP Guaranty and Commitment (as defined in the Acquisition Agreement); and (iii) indemnification obligations to the Walt Disney Companies pursuant to the Disney License Agreement (as to which, the Borrowers are subject to the restrictions set forth in Section 7.16, below).

**7.7 Nature of Business**. Make any change in the principal nature of Borrower's business, other than in connection with the consummation of the Disney Stores Acquisition.

**7.8 Prepayments and Amendments.**

(a) Except in connection with a refinancing permitted by Section 7.1(d), prepay, redeem, retire, defease, purchase, or otherwise acquire any Indebtedness owing to any third Person, other than the Obligations in accordance with this Agreement, and

(b) Directly or indirectly, amend, modify, alter, increase, or change any of the terms or conditions of any agreement, instrument, document, indenture, or other writing evidencing or concerning Indebtedness permitted under Sections 7.1(b), (c), or (d).

**7.9 Change of Control**. Except for transfers of shares by Parent's existing shareholders to members of their immediate family, cause, permit, or suffer, directly or indirectly, any Change of Control.

**7.10 Consignments**. Consign any Inventory or sell any Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale.

**7.11 Distributions**. Make any distribution or declare or pay any dividends (in cash or other property, other than capital stock) on, or purchase, acquire, redeem, or retire any of Parent's capital stock, of any class, whether now or hereafter outstanding; provided, however, Parent may buy back certain of its capital stock so long as (i) no Event of Default or Default exists and (ii) there has been at least $10,000,000 of borrowing Availability under Section 2.1 (without being limited by the Maximum Amount) as of the end of each of the three months preceding such payment or purchase, and on such date, after taking into account the payment or purchase of such stock.

**7.12 Accounting Methods**. Modify or change its method of accounting or enter into, modify, or terminate any agreement currently existing, or at any time hereafter entered into with any third party accounting firm or service bureau for the preparation or storage of Borrowers' accounting records without said accounting firm or service bureau agreeing to provide Agent information regarding the Collateral or Borrowers' financial condition. Each Borrower waives the right to assert a confidential relationship, if any, it may have with any accounting firm or service bureau in connection with any information requested by Agent pursuant to or in accordance with this Agreement, and agrees that Agent may contact directly any such accounting firm or service bureau in order to obtain such information.

**7.13 Advances, Investments and Loans.** Make any investment except:

(a) investments in cash and cash equivalents and equity investments in Subsidiaries in an amount not to exceed $1,000,000 in the aggregate in any Fiscal Year, (including not more than $750,000 to Twinbrook in any Fiscal Year;

(b) so long as no Event of Default shall have occurred and be continuing, or would occur as a consequence thereof, Parent and its Subsidiaries may (i) make loans and advances to employees for moving and travel expenses and other similar expenses, in each case incurred in the ordinary course of business, and (ii) make other loans and advances to directors, officers, employees and vendors, (A) so long as, as of the end of each of the three months preceding such loan or advance and on such date after taking into account the particular loan or advance and (B) such loans and advances in the aggregate shall not exceed, $6,000,000 outstanding at any one time;

(c) investments in existence on the date hereof and so long as no Event of Default shall have occurred and be continuing, or would occur as a consequence thereof, extensions, renewals, modifications, restatements or replacements thereof so long as the aggregate dollar amount of all such extensions, renewals, modifications, restatements, or replacements does not exceed the amount of such investments in existence on the date hereof;

(d) so long as no Event of Default shall have occurred and be continuing, or would occur as a consequence thereof, Parent may make loans and advances to its Subsidiaries in the aggregate amount of $5,000,000 outstanding at any one time; and

(e) investments in Hoop Holdings, LLC, Hoop Retail Stores, LLC or The Disney Store, LLC in accordance with, and as contemplated in the Acquisition Agreement, the TCP Guaranty and Commitment (as each of those terms is defined in the Acquisition Agreement) and the Disney License Agreement.

**7.14 Transactions with Affiliates**. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of any Borrower except for: (a) transactions that are in the ordinary course of such Borrower's business, upon fair and reasonable terms, that are fully disclosed to Agent, and that are no less favorable to such Borrower than would be obtained in arm's length transaction with a non-Affiliate, (b) the employment agreement between Parent and Ezra Dabah, (c) the advisory agreement between Parent and SKM Investors; (d) transactions in connection with the Disney Stores Acquisition, as otherwise contemplated by, and specified in this Agreement, (e) payment of insurance premiums to Twin Brook in an amount not to exceed $750,000 in any fiscal year, and (f) transactions between Parent and Services Company in the ordinary course of business.

**7.15 Suspension**. Suspend or go out of a substantial portion of their business.

**7.16 Use of Proceeds**. Use (a) the proceeds of the Advances for any purpose other than (i) to pay transactional costs and expenses incurred in connection with this Agreement, (ii) assuming the Obligations under the Existing Loan Agreement, (iii) to fund the Disney Stores Acquisition via a capital contribution at closing of $50,000,000.00; (iv) to fund working capital in the ordinary course of business; (v) to fund capital expenditures, including the additional $50,000,000.00 capital contribution to be made pursuant to the Disney License Agreement and the TCP Guaranty and Commitment (as defined in the Acquisition Agreement); (vi) to fund the Borrowers' share of the working capital adjustment to the Walt Disney Companies due in accordance with the Acquisition Agreement; and (vii) thereafter, consistent with the terms and conditions hereof, for its lawful and permitted corporate purposes. In no event may any proceeds of Advances be used to pay indemnification obligations to the Walt Disney Companies, as described in Section 7.6, above, in an amount greater than $25,000,000.00 at any one time or in the aggregate, without the prior written consent of the Required Lenders.

**7.17 Change in Location of Chief Executive Office; Inventory and Equipment with Bailees.** Relocate its chief executive office to a new location without providing 30 days prior written notification thereof to Agent and so long as, at the time of such written notification, Borrowers provide any financing statements or fixture filings necessary to perfect and continue perfected the Lien of Agent (for the benefit of the Lender Group) and also provides to Agent a Collateral Access Agreement with respect to such new location. The Inventory and Equipment shall not at any time now or hereafter be stored with a bailee, warehouseman, or similar party without Agent's prior written consent.

**7.18 No Prohibited Transactions Under ERISA.** Directly or indirectly:

(a) engage, or permit any Subsidiary of any Borrower to engage, in any prohibited transaction which is reasonably likely to result in a civil penalty or excise tax described in Sections 406 of ERISA or 4975 of the IRC for which a statutory or class exemption is not available or a private exemption has not been previously obtained from the Department of Labor;

(b) permit to exist with respect to any Benefit Plan any accumulated funding deficiency (as defined in Sections 302 of ERISA and 412 of the IRC), whether or not waived;

(c) fail, or permit any Subsidiary of any Borrower to fail, to pay timely required contributions or annual installments due with respect to any waived funding deficiency to any Benefit Plan;

(d) terminate, or permit any Subsidiary of any Borrower to terminate, any Benefit Plan where such event would result in any liability of any Borrower, any of its Subsidiaries or any ERISA Affiliate under Title IV of ERISA;

(e) fail, or permit any Subsidiary of any Borrower to fail, to make any required contribution or payment to any Multiemployer Plan;

(f) fail, or permit any Subsidiary of any Borrower to fail, to pay any required installment or any other payment required under Section 412 of the IRC on or before the due date for such installment or other payment;

(g) amend, or permit any Subsidiary of any Borrower to amend, a Plan resulting in an increase in current liability for the plan year such that either of any Borrower, any Subsidiary of any Borrower or any ERISA Affiliate is required to provide security to such Plan under Section 401(a)(29) of the IRC; or

(h) withdraw, or permit any Subsidiary of any Borrower to withdraw, from any Multiemployer Plan where such withdrawal is reasonably likely to result in any liability of any such entity under Title IV of ERISA;

which, individually or in the aggregate, results in or reasonably would be expected to result in a claim against or liability of any Borrower, any of its Subsidiaries or any ERISA Affiliate in excess of $100,000.

7.19 Financial Covenants.

(a) Fail to maintain Availability at all times of not less than $14,000,000.00 without regard to the Maximum Amount.

(b) Fail to achieve, on and as of December 31, 2004, (i) Availability in an amount not less than $20,000,000.00, (ii) Revolving Facility Usage of $0.00, and (iii) a permanent reduction of the outstanding balance of the Temporary Overadvance Facility to $0.00.

**7.20 Capital Expenditures**. Make capital expenditures (based upon Parent's Statement of Cash Flows for Investing Activities, exclusive of non-capital items) in each of the following Fiscal Years in excess of the applicable amount set forth below:

| Fiscal Year Ending On or About | Maximum Capital Expenditures |
|---|---|
| January 31, 2005 | $50,000,000.00 (exclusive of the $50,000,000 capital contribution upon closing of the Disney Stores Acquisition) |
| January 31, 2006 | $60,000,000.00 |

Of the foregoing amounts, and of the corresponding amounts agreed to for future periods that are set forth in the table below, the Borrowers acknowledge and agree that the respective amounts set forth in the table below opposite each such period shall only be available for use as investments in Hoop Retail Stores, LLC or The Disney Store, LLC during that period:

| **Period** | **Amount to be Preserved for investments in Hoop Retail Stores, LLC or The Disney Stores N.A., LLC** |
|---|---|
| Closing Date through January 31, 2006 | $10,000,000 |
| February 1, 2006 - January 31, 2007 | $15,000,000 |
| February 1, 2007 - January 31, 2008 | $20,000,000 |

| | |
|---|---|
| February 1, 2008 - January 31, 2009 | $15,000,000 |

Further, if the Borrowers desire during any fiscal period specified in the table above to expend amounts greater than those provided for such period in the table above as investments in Hoop Retail Stores, LLC or The Disney Store, LLC, then as of the date any such additional investment is made, (i) immediately after giving effect to the proposed investment, and (ii) for a period of Ninety (90) days thereafter the Borrowers are projected to maintain Availability of not less than $25,000,000. The Agent agrees that it will not unreasonably withhold its consent to any requested modification of, or increase to the foregoing terms and conditions.

Agent and Administrative Borrower shall reasonably agree upon the maximum capital expenditures for the Fiscal Year ending on or about January 31, 2007 based upon Parent’s Business Plan for such Fiscal Year.

**8. EVENTS OF DEFAULT**. Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

(a) If any Borrower fails to pay when due and payable or when declared due and payable, any portion of the Obligations (whether of principal, interest (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts), fees and charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts constituting Obligations);

(b) If any Borrower fails or neglects to perform, keep, or observe any term, provision, condition, covenant, or agreement contained in this Agreement, in any of the Loan Documents, or in any other present or future agreement among Borrowers and the Lender Group; provided, however, that Borrowers' failure or neglect to comply with Sections 6.1(b), 6.2, 6.3, 6.4, 6.5, 6.6, 6.8, 6.11 and 6.13 shall not constitute an Event of Default hereunder unless such failure or neglect continues for five days or more;

(c) If there is a material impairment of the prospect of repayment of any portion of the Obligations owing to the Lender Group or a material impairment of the value or priority of the Lender Group's security interests in the Collateral;

(d) If any material portion of Borrowers' properties or assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any third Person;

(e) If an Insolvency Proceeding is commenced by any Borrower;

(f) If an Insolvency Proceeding is commenced against any Borrower and any of the following events occur: (a) such Borrower consents to the institution of the Insolvency Proceeding against it; (b) the petition commencing the Insolvency Proceeding is not timely controverted; (c) the petition commencing the Insolvency Proceeding is not dismissed within 45 calendar days of the date of the filing thereof; provided, however, that, during the pendency of such period, the Lender Group shall be relieved of its obligation to extend credit hereunder; (d) an interim trustee is appointed to take possession of all or a substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, such Borrower; or (e) an order for relief shall have been issued or entered therein;

(g) If any Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs;

(h) If a notice of Lien, levy, or assessment is filed of record with respect to any of any Borrower's properties or assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, or if 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 Borrower's properties or assets and the same is not paid on the payment date thereof;

(i) If (a) 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 Lender Group's security interests in the Collateral, or (b) if a judgment or other claim in excess of $500,000 becomes a lien or encumbrance upon any material portion of Borrower's properties or assets and shall remain outstanding 30 days or longer;

(j) If there is a default in an agreement involving Indebtedness of $500,000, or more, or any material agreement to which any Borrower is a party with one or more third Persons resulting in a right by such third Persons, irrespective of whether exercised, to accelerate the maturity of such Borrower's obligations thereunder;

(k) If any Borrower makes any payment on account of Indebtedness that has been contractually subordinated in right of payment to the payment of the Obligations, except to the extent such payment is permitted by the terms of the subordination provisions applicable to such Indebtedness;

(l) If any material misstatement or misrepresentation exists now or hereafter in any warranty, representation, statement, or report made to the Lender Group by any Borrower or any officer, employee, agent, or director of any Borrower, or if any such warranty or representation is withdrawn; or

(m) If the obligation of any guarantor under its guaranty or other third Person under any Loan Document is limited or terminated by operation of law or by the guarantor or other third Person thereunder, or any such guarantor or other third Person becomes the subject of an Insolvency Proceeding.

**9. THE LENDER GROUP'S RIGHTS AND REMEDIES.**

**9.1 Rights and Remedies**. Upon the occurrence, and during the continuation, of an Event of Default Agent may, pursuant to Sections 17.4 and 17.5, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Borrowers:

(a) Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable;

(b) Cease advancing money or extending credit to or for the benefit of Borrowers under this Agreement, under any of the Loan Documents, or under any other agreement between Borrower and the Lender Group;

(c) Terminate this Agreement and any of the other Loan Documents as to any future liability or obligation of the Lender Group, but without affecting the Lender Group's rights and security interests in the Collateral and without affecting the Obligations;

(d) Settle or adjust disputes and claims directly with Account Debtors for amounts and upon terms which Agent considers advisable, and in such cases, Agent will credit Borrowers' Loan Account with only the net amounts received by Agent in payment of such disputed Accounts after deducting all Lender Group Expenses incurred or expended in connection therewith;

(e) Cause Borrowers to hold all returned Inventory in trust for the Lender Group, segregate all returned Inventory from all other property of Borrowers or in Borrowers' possession and conspicuously label said returned Inventory as the property of the Lender Group;

(f) Without notice to or demand upon Borrowers or any guarantor, make such payments and do such acts as Agent considers necessary or reasonable to protect its security interests in the Collateral. Each Borrower agrees to assemble the Collateral if Agent so requires, and to make the Collateral available to Agent as Agent may designate. Each Borrower authorizes Agent to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or Lien that in Agent's determination appears to conflict with the Liens of Agent (for the benefit of the Lender Group) in the Collateral and to pay all expenses incurred in connection therewith. With respect to any of Borrowers' owned or leased premises, Borrowers hereby grant Agent a license to enter into possession of such premises and to occupy the same, without charge, for up to 120 days in order to exercise any of the Lender Group's rights or remedies provided herein, at law, in equity, or otherwise;

(g) Without notice to Borrowers (such notice being expressly waived), and without constituting a retention of any collateral in satisfaction of an obligation (within the meaning of Section 9505 of the Code), set off and apply to the Obligations any and all (i) balances and deposits of Borrowers held by the Lender Group (including any amounts received in the Lockbox Accounts), or (ii) indebtedness at any time owing to or for the credit or the account of Borrower held by the Lender Group;

(h) Hold, as cash collateral, any and all balances and deposits of Borrowers held by the Lender Group, and any amounts received in the Lockbox Accounts, to secure the full and final repayment of all of the Obligations;

(i) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Agent is hereby granted a license or other right to use, without charge, Borrowers' labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and Borrowers' rights under all licenses and all franchise agreements shall inure to the Lender Group's benefit;

(j) Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrowers' premises) as Agent determines is commercially reasonable. It is not necessary that the Collateral be present at any such sale;

(k) Agent shall give notice of the disposition of the Collateral as follows:

(A) Agent shall give Administrative Borrower and each holder of a security interest in the Collateral who has filed with Agent a written request for notice, a notice in writing of the time and place of public sale, or, if the sale is a private sale or some other disposition other than a public sale is to be made of the Collateral, then the time on or after which the private sale or other disposition is to be made;

(B) The notice shall be personally delivered or mailed, postage prepaid, to Administrative Borrower as provided in Section 12, at least 10 days before the date fixed for the sale, or at least 10 days before the date on or after which the private sale or other disposition is to be made; no notice needs to be given prior to the disposition of any portion of the Collateral that is perishable or threatens to decline speedily in value or that is of a type customarily sold on a recognized market. Notice to Persons other than Borrowers claiming an interest in the Collateral shall be sent to such addresses as they have furnished to Agent;

(C) If the sale is to be a public sale, Agent also shall give notice of the time and place by publishing a notice one time at least 10 days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held;

(l) Agent may credit bid and purchase at any public sale; and

(m) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrowers. Any excess will be returned, without interest and subject to the rights of third Persons, by Agent to Borrowers.

**9.2 Remedies Cumulative.** The Lender Group's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

**10. TAXES AND EXPENSES.** If Borrowers fail to pay any monies (whether taxes, assessments, insurance premiums, or, in the case of leased properties or assets, rents or other amounts payable under such leases) due to third Persons, or fails to make any deposits or furnish any required proof of payment or deposit, all as required under the terms of this Agreement, then, to the extent that Agent determines that such failure by Borrowers could result in a Material Adverse Change, in its discretion and without prior notice to Borrowers, Agent may do any or all of the following: (a) make payment of the same or any part thereof; (b) set up such reserves in Borrowers' Loan Account as Agent deems necessary to protect the Lender Group from the exposure created by such failure; or (c) obtain and maintain insurance policies of the type described in Section 6.9, and take any action with respect to such policies as Agent deems prudent. Any such amounts paid by Agent shall constitute Lender Group Expenses. Any such payments made by Agent shall not constitute an agreement by the Lender Group to make similar payments in the future or a waiver by the Lender Group of any Event of Default under this Agreement. Agent need not inquire as to, or contest the validity of, any such expense, tax, or Lien and the receipt of the usual official notice for the payment thereof shall be conclusive evidence that the same was validly due and owing.

**11. WAIVERS; INDEMNIFICATION.**

**11.1 Demand; Protest; etc.** Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which such Borrower may in any way be liable.

**11.2 The Lender Group's Liability for Collateral**. So long as the Lender Group complies with its obligations, if any, under Section 9207 of the Code, the Lender Group shall not in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person. All risk of loss, damage, or destruction of the Collateral shall be borne by Borrowers.

**11.3 Indemnification**. Each Borrower shall pay, indemnify, defend, and hold each Agent-Related Person, each Lender, each Participant, and each of their respective officers, directors, employees, counsel, agents, and attorneys-in-fact (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, and damages, and all reasonable attorneys fees and disbursements and other costs and expenses actually incurred in connection therewith (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them in connection with or as a result of or related to the execution, delivery, enforcement, performance, and administration of this Agreement and any other Loan Documents or the transactions contemplated herein, and with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event or circumstance in any manner related thereto (all the foregoing, collectively, the "Indemnified Liabilities"). Each Borrower shall have no obligation to any Indemnified Person under this Section 11.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person. This provision shall survive the termination of this Agreement and the repayment of the Obligations.

**12. NOTICES.** Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, or telefacsimile to Administrative Borrower or to Agent, as the case may be, at its address set forth below:

**If to Administrative Borrower:**

**THE CHILDREN'S PLACE RETAIL STORES, INC.**
915 Secaucus Road
Secaucus, New Jersey 07094
Attn: Chief Financial Officer
Fax No. 201.558.2837

**THE CHILDREN'S PLACE RETAIL STORES, INC.**

915 Secaucus Road
Secaucus, New Jersey 07094
Attn: General Counsel
Fax No. 201.558.2840

**with copies to:**

**STROOCK & STROOCK & LAVAN LLP**
180 Maiden Lane
New York, New York 10038
Attn: Jeffrey S. Lowenthal, Esq.
Fax No. 212.806.6006

**If to Agent or the Lender Group in case of Agent:**

**WELLS FARGO RETAIL FINANCE, LLC**
One Boston Place
Suite 1800
Boston, Massachusetts 02108
Attn: David Molinario
Fax No. 617.523.4027

**with copies to:**

**RIEMER & BRAUNSTEIN LLP**
Three Center Plaza
Boston, Massachusetts 02108
Attn: Donald E. Rothman, Esq.
Fax No. 617 880 3456

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other. All notices or demands sent in accordance with this Section 12, other than notices by Agent in connection with Sections 9611 or 9620 of the Code, shall be deemed received on the earlier of the date of actual receipt or three days after the deposit thereof in the mail. Borrowers acknowledge and agree that notices sent by Agent in connection with Sections 9611 or 9620 of the Code shall be deemed sent when deposited in the mail or personally delivered, or, where permitted by law, transmitted by telefacsimile or other similar method set forth above.

**13. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER. THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA OR, AT THE SOLE OPTION OF THE LENDER GROUP, IN ANY OTHER COURT IN WHICH THE LENDER GROUP SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 13. EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

**14. DESTRUCTION OF BORROWER'S DOCUMENTS**. All documents, schedules, invoices, agings, or other papers delivered to Agent may be destroyed or otherwise disposed of by Agent four months after they are delivered to or received by Agent, unless Administrative Borrower requests, in writing, the return of said documents, schedules, or other papers and makes arrangements, at Borrowers' expense, for their return.

**15. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS**.

**15.1 Assignments and Participations**.

(a) Any Lender may, with the written consent of Agent (and, if no Event of Default then exists and is continuing, the Administrative Borrower (whose consent shall not be unreasonably withheld)) assign and delegate to one or more Eligible Transferees (each an "Assignee") all, or any ratable part, of the Obligations, the Commitments, and the other rights and obligations

of such Lender hereunder and under the other Loan Documents, in a minimum amount of $5,000,000; provided, however, that Borrowers and Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, shall have been given to Administrative Borrower and Agent by such Lender and the Assignee; (ii) such Lender and its Assignee shall have delivered to Administrative Borrower and Agent a fully executed Assignment and Acceptance ("Assignment and Acceptance") in the form of Exhibit A-1; and (iii) the assignor Lender or Assignee has paid to Agent for Agent's sole and separate account a processing fee in the amount of $5,000. Anything contained herein to the contrary notwithstanding, the consent of Agent shall not be required (and payment of any fees shall not be required) if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of such Lender.

(b) From and after the date that Agent notifies the assignor Lender that it has received a fully executed Assignment and Acceptance and payment of the above-referenced processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assignor Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto), and such assignment shall effect a novation between Borrowers and the Assignee.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (1) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties, or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency, or value of this Agreement or any other Loan Document furnished pursuant hereto; (2) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrowers or any guarantor or the performance or observance by Borrowers or any guarantor of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto; (3) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (4) such Assignee will, independently and without reliance upon Agent, such assigning Lender, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (5) such Assignee appoints and authorizes Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to Agent by the terms hereof, together with such powers as are reasonably incidental thereto; and (6) such Assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon each Assignee's making its processing fee payment under the Assignment and Acceptance, this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments of the Assignor and Assignee arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitment of the assigning Lender pro tanto.

(e) Any Lender may at any time, with the written consent of Agent, which consent shall not be unreasonably withheld, (and, if no Event of Default then exists and is continuing, the Administrative Borrower (whose consent shall not be unreasonably withheld)) sell to one or more Persons (a "Participant") participating interests in the Obligations, the Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, however, that (i) the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrower and Agent shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Originating Lender shall transfer or grant any participating interest under which the Participant has the sole and exclusive right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such participant is participating; (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating; (C) release all or a material portion of the Collateral (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating; (D) postpone the payment of, or reduce the amount of, the interest or fees hereunder in which such Participant is participating; or (E) change the amount or due dates of scheduled principal repayments or prepayments or premiums in respect of the Obligations hereunder in which such Participant is participating; and (v) all amounts payable by Borrowers hereunder shall be determined as if such Originating Lender had not sold such participation; except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; provided, however, that no Participant may exercise any such right of setoff without the notice to and consent of Agent. The rights of any Participant shall only be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any direct rights as to the other Lenders, Agent, Borrowers, the Collections, the Collateral, or otherwise in respect of the Advances or the Letters of Credit. No Participant shall have the right to participate directly in the making of decisions by the Lenders among

themselves. The provisions of this Section 15.1(e) are solely for the benefit of the Lender Group, and Borrowers shall have no rights as a third party beneficiary of any of such provisions.

(f) In connection with any such assignment or participation or proposed assignment or participation, a Lender may disclose to a third party all documents and information which it now or hereafter may have relating to Borrowers or Borrowers' business.

(g) Notwithstanding any other provision in this Agreement, (i) any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the FRB or U.S. Treasury Regulation 31 CFRss.203.14, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law and the Administrative Borrower shall have no right to consent thereto, and (ii) the Administrative Agent shall not be entitled to consent to any assignment or participation arising as a result of the acquisition of a Lender or all or any portion of its loan portfolio by any other Person.

**15.2 Successors.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrowers may not assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void. No consent to assignment by the Lenders shall release Borrowers from their Obligations. A Lender may assign this Agreement and its rights and duties hereunder pursuant to Section 15.1 and, except as expressly required pursuant to Section 15.1, no consent or approval by Borrowers is required in connection with any such assignment.

**16. AMENDMENTS; WAIVERS**.

**16.1 Amendments and Waivers**.

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by Borrowers therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and Borrowers and then any 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 waiver, amendment, or consent shall, unless in writing and signed by all the Lenders and Borrowers and acknowledged by Agent, do any of the following:

(a) increase or extend the Commitment of any Lender;

(b) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan, or any fees or other amounts payable hereunder or under any other Loan Document;

(d) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Advances, which is required for the Lenders or any of them to take any action hereunder;

(e) increase the advance rate with respect to Advances (except for the restoration of an advance rate after the prior reduction thereof), or change Section 2.1(b);

(f) amend this Section or any provision of the Agreement providing for consent or other action by all Lenders;

(g) release Collateral other than as permitted by Section 17.11;

(h) change the definition of "Required Lenders";

(i) release any Borrower from any Obligation for the payment of money; or

(j) amend any of the provisions of Article 17.

and, provided further, that no amendment, waiver or consent shall, unless in writing and signed by Agent, affect the rights or duties of Agent under this Agreement or any other Loan Document; and, provided further, that the limitation contained in clause (e) above shall not be deemed to limit the ability of Agent to make Advances or Agent Loans, as applicable, in accordance with the provisions of Sections 2.1(g), (h), or (l). The foregoing notwithstanding, any amendment, modification, waiver, consent, termination, or release of or with respect to any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of Borrowers, shall not require consent by or the agreement of Borrowers.

**16.2 No Waivers; Cumulative Remedies.** No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement, any other Loan Document, or any present or future supplement hereto or thereto, or in any other agreement between or among Borrowers and Agent and/or any Lender, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or the Lenders on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrowers of any provision of this Agreement. Agent's and each Lender's rights under this Agreement

and the other Loan Documents will be cumulative and not exclusive of any other right or remedy which Agent or any Lender may have.

**17. AGENT; THE LENDER GROUP.**

**17.1 Appointment and Authorization of Agent.**

Each Lender hereby designates and appoints Wells Fargo Retail as its Agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as such on the express conditions contained in this Article 17. The provisions of this Article 17 are solely for the benefit of Agent and the Lenders, and Borrowers shall not have any rights as a third party beneficiary of any of the provisions contained herein; provided, however, that the provisions of Sections 17.10, 17.11, and 17.16(d) also shall be for the benefit of Borrowers. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations, or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions which Agent is expressly entitled to take or assert under or pursuant to this Agreement and the other Loan Documents, including making the determinations contemplated by Section 2.1(b). Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Advances, the Collateral, the Collections, and related matters; (b) execute and/or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim for Lenders, notices and other written agreements with respect to the Loan Documents; (c) make Advances for itself or on behalf of Lenders as provided in the Loan Documents; (d) exclusively receive, apply, and distribute the Collections as provided in the Loan Documents; (e) open and maintain such bank accounts and lock boxes as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the Collections; (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Borrowers, the Advances, the Collateral, the Collections, or otherwise related to any of same as provided in the Loan Documents; and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

**17.2 Delegation of Duties.** Except as otherwise provided in this Section, Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees, or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects as long as such selection was made in compliance with this Section and without gross negligence or willful misconduct. The foregoing notwithstanding, Agent shall not make any material delegation of duties to subagents or non-employee delegees without the prior written consent of Required Lenders (it being understood that routine delegation of such administrative matters as filing financing statements, or conducting appraisals or audits, is not viewed as a material delegation that requires prior Required Lender approval).

**17.3 Liability of Agent-Related Persons.** None of the Agent-Related Persons shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or, (ii) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by Borrowers, or any Subsidiary or Affiliate of Borrowers, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement, or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Borrowers or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books, or records of Borrowers, or any of Borrowers' Subsidiaries or Affiliates.

**17.4 Reliance by Agent.** Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrowers or counsel to any Lender), independent accountants, and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders or all Lenders, as applicable, and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable so long as it is not grossly negligent or guilty of willful misconduct. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders or all Lenders, as applicable, and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

**17.5 Notice of Default or Event of Default.** Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of Agent or the Lenders, except with respect to actual knowledge of the existence of an Overadvance, and except with respect to Defaults and Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has, or is deemed to have, actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 17.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders; provided, however, that:

(a) At all times, Agent may propose and, with the consent of Required Lenders (which shall not be unreasonably withheld and which shall be deemed to have been given by a Lender unless such Lender has notified Agent to the contrary in writing within three days of notification of such proposed actions by Agent) exercise, any remedies on behalf of the Lender Group; and

(b) At all times, once Required Lenders or all Lenders, as the case may be, have approved the exercise of a particular remedy or pursuit of a course of action, Agent may, but shall not be obligated to, make all administrative decisions in connection therewith or take all other actions reasonably incidental thereto (for example, if the Required Lenders approve the foreclosure of certain Collateral, Agent shall not be required to seek consent for the administrative aspects of conducting such sale or handling of such Collateral).

**17.6 Credit Decision.** Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of Borrowers and their Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition, and creditworthiness of Borrowers and any other Person (other than the Lender Group) party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals, and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition, and creditworthiness of Borrowers, and any other Person (other than the Lender Group) party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition, or creditworthiness of Borrowers, and any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons.

**17.7 Costs and Expenses; Indemnification.** Agent may incur and pay Lender Group Expenses to the extent Agent deems reasonably necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including without limiting the generality of the foregoing, but subject to any requirements of the Loan Documents that it obtain any applicable consents or engage in any required consultation, court costs, reasonable attorneys fees and expenses, costs of collection by outside collection agencies and auctioneer fees and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to the Loan Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from Collections to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event Agent is not reimbursed for such costs and expenses from Collections, each Lender hereby agrees that it is and shall be obligated to pay to or reimburse Agent for the amount of such Lender's Pro Rata Share thereof. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligations of Borrowers to do so), according to their Pro Rata Shares, from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to the Agent-Related Persons of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence, bad faith, or willful misconduct. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including attorney fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section 17.7 shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

**17.8 Agent in Individual Capacity.** Wells Fargo Retail and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests, in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrowers and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though Wells Fargo Retail were not Agent hereunder without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, Wells Fargo Retail and its Affiliates may receive information regarding Borrowers or their Affiliates and any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrowers or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge

that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall be under no obligation to provide such information to them. With respect to the Agent Loans and Agent Advances, Wells Fargo Retail shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not Agent, and the terms "Lender" and "Lenders" include Wells Fargo Retail in its individual capacity.

**17.9 Successor Agent.** Agent may resign as Agent following notice of such resignation ("Notice") to the Lenders and Administrative Borrower, and effective upon the appointment of and acceptance of such appointment by, a successor Agent. If Agent resigns under this Agreement, the Required Lenders shall appoint any Lender or Eligible Transferee as successor Agent for the Lenders. If no successor Agent is appointed within 30 days of such retiring Agent's Notice, Agent may appoint a successor Agent, after consulting with the Lenders and Administrative Borrower. In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 17 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement.

**17.10 Withholding Tax.**

(a) If any Lender is a "foreign corporation, partnership or trust" within the meaning of the IRC and such Lender claims exemption from, or a reduction of, U.S. withholding tax under Sections 1441 or 1442 of the IRC, such Lender agrees with and in favor of Agent and Borrowers, to deliver to Agent and Borrowers:

(i) if such Lender claims an exemption from, or a reduction of, withholding tax under a United States tax treaty, properly completed IRS Form W-8BEN before the payment of any interest in the first calendar year and before the payment of any interest in each third succeeding calendar year during which interest may be paid under this Agreement;

(ii) if such Lender claims that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, two properly completed and executed copies of IRS Form W-8ECI before the payment of any interest is due in the first taxable year of such Lender and in each succeeding taxable year of such Lender during which interest may be paid under this Agreement, and IRS Form W-9; and

(iii) such other form or forms as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding tax.

Such Lender agrees to promptly notify Agent and Borrowers of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(b) If any Lender claims exemption from, or reduction of, withholding tax under a United States tax treaty by providing IRS Form W-8BEN and such Lender sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers, such Lender agrees to notify Agent and Borrower of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender. To the extent of such percentage amount, Agent and Borrowers will treat such Lender's IRS Form W-8BEN as no longer valid.

(c) If any Lender claiming exemption from United States withholding tax by filing IRS Form W-8ECI with Agent sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender, such Lender agrees to undertake sole responsibility for complying with the withholding tax requirements imposed by Sections 1441 and 1442 of the IRC.

(d) If any Lender is entitled to a reduction in the applicable withholding tax, Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by subsection (a) of this Section are not delivered to Agent, then Agent may withhold from any interest payment to such Lender not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(e) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent or Borrowers did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent and Borrowers of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify Agent and Borrowers fully for all amounts paid, directly or indirectly, by Agent or Borrowers as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent or Borrowers under this Section, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders under this subsection shall survive the payment of all Obligations and the resignation of Agent.

**17.11 Collateral Matters.**

(a) The Lenders hereby irrevocably authorize Agent, to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Borrowers of all Obligations; and upon such termination and payment Agent shall deliver to Administrative Borrower, at Administrative Borrower's sole cost and expense, all UCC termination statements and any other documents necessary to terminate the Loan Documents and release the Liens with respect to the

Collateral; (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Administrative Borrower certifies to Agent that the sale or disposition is permitted under Section 7.4 of this Agreement or the other Loan Documents (and Agent may rely conclusively on any such certificate, without further inquiry); (iii) constituting property in which Borrowers owned no interest at the time the Lien was granted or at any time thereafter; or (iv) constituting property leased to Borrowers under a lease that has expired or been terminated in a transaction permitted under this Agreement. Except as provided above, Agent will not release any Lien on any Collateral without the prior written authorization of the Lenders. Upon request by Agent or Administrative Borrower at any time, the Lenders will confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 17.11; provided, however, that (i) Agent shall not be required to execute any document necessary to evidence such release on terms that, in Agent's opinion, would expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Liens (other than those expressly being released), upon (or obligations of Borrowers in respect of) all interests retained by Borrowers, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(b) Agent shall have no obligation whatsoever to any of the Lenders to assure that the Collateral exists or is owned by Borrowers, is cared for, protected, or insured or has been encumbered, or that the Liens of the Agent (for the benefit of the Lender Group) have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender as to any of the foregoing, except as otherwise provided herein.

**17.12 Restrictions on Actions by Lenders; Sharing of Payments.**

(a) Each of the Lenders agrees that it shall not, without the express consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the request of Agent, set off against the Obligations any amounts owing by such Lender to Borrowers or any accounts of Borrower now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so by Agent, take or cause to be taken any action, including the commencement of any legal or equitable proceedings, to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral the purpose of which is, or could be, to give such Lender any preference or priority against the other Lenders with respect to the Collateral.

(b) Subject to Section 17.8, if, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations of Borrowers to such Lender arising under, or relating to, this Agreement or the other Loan Documents, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender shall promptly (1) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in same day funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (2) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, however, that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

**17.13 Agency for Perfection.** Agent and each Lender hereby appoints each other Lender as agent for the purpose of perfecting the Liens of the Lender Group in assets which, in accordance with Division 9 of the UCC can be perfected only by possession. Should any Lender obtain possession of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver such Collateral to Agent or in accordance with Agent's instructions.

**17.14 Payments by Agent to the Lenders.** All payments to be made by Agent to the Lenders shall be made by bank wire transfer or internal transfer of immediately available funds pursuant to the instructions set forth on Schedule C-1, or pursuant to such other wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium or interest on revolving advances or otherwise.

**17.15 Concerning the Collateral and Related Loan Documents.** Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents relating to the Collateral, for the ratable benefit (subject to Section 4.1) of the Lender Group. Each member of the Lender Group agrees that any action taken by Agent, Required Lenders, or all Lenders, as applicable, in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent, Required Lenders, or all Lenders, as applicable, of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

**17.16 Field Audits and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information.** By signing this Agreement, each Lender;

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report (each a "Report" and collectively, "Reports") prepared by Agent, and Agent shall so furnish each Lender with such Reports;

(b) expressly agrees and acknowledges that Agent (i) does not make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any audit or examination will inspect only specific information regarding Borrowers and will rely significantly upon books and records, as well as on representations of Borrowers' personnel;

(d) agrees to keep all Reports and other material information obtained by it pursuant to the requirements of this Agreement in accordance with its reasonable customary procedures for handling confidential information; it being understood and agreed by Borrower that in any event such Lender may make disclosures (i) reasonably required by any bona fide potential or actual Assignee, transferee, or Participant in connection with any contemplated or actual assignment or transfer by such Lender of an interest herein or any participation interest in such Lender's rights hereunder, (ii) of information that has become public by disclosures made by Persons other than such Lender, its Affiliates, assignees, transferees, or participants, or (iii) as required or requested by any court, governmental or administrative agency, pursuant to any subpoena or other legal process, or by any law, statute, regulation, or court order; provided, however, that, unless prohibited by applicable law, statute, regulation, or court order, such Lender shall notify Administrative Borrower of any request by any court, governmental or administrative agency, or pursuant to any subpoena or other legal process for disclosure of any such non-public material information concurrent with, or where practicable, prior to the disclosure thereof; and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers; and (ii) to pay and protect, and indemnify, defend, and hold Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses and other amounts (including, attorney costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing: (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by Borrowers to Agent, and, upon receipt of such request, Agent shall provide a copy of same to such Lender promptly upon receipt thereof; (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Borrowers, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrowers the additional reports or information specified by such Lender, and, upon receipt thereof, Agent promptly shall provide a copy of same to such Lender; and (z) any time that Agent renders to Administrative Borrower a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

**17.17 Several Obligations; No Liability.** Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any Advances shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such Advances not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 17.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to Borrowers or any other Person for any failure by any other Lender to fulfill its obligations to make Advances, nor to advance for it or on its behalf in connection with its Commitment, nor to take any other action on its behalf hereunder or in connection with the financing contemplated herein.

**17.18 Documentation Agent; Co-Agent.**

Notwithstanding the provisions of this Agreement or any of the other Loan Documents, Congress Financial Corporation (New England) (in its capacity as Documentation Agent, as opposed to its capacity as a Lender), and LaSalle Retail Finance, a division of LaSalle Business Credit LLC (in its capacity as Co-Agent, as opposed to its capacity as a Lender) shall have no powers, rights, duties, responsibilities, or liabilities with respect to this Agreement and the other Loan Documents, nor shall Congress Financial Corporation (New England) or LaSalle Retail Finance, a division of LaSalle Business Credit LLC have or be deemed to have any fiduciary relationship with any Lender.

**18. GENERAL PROVISIONS.**

**18.1 Effectiveness.**

This Agreement shall be binding and deemed effective when executed by Borrowers and the Lender Group.

**18.2 Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each section applies equally to this entire Agreement.

**18.3 Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against the Lender Group or Borrowers, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

**18.4 Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

**18.5 Counterparts; Telefacsimile Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

**18.6 Revival and Reinstatement of Obligations.** If the incurrence or payment of the Obligations by Borrowers or any guarantor of the Obligations or the transfer by any or all of such parties to the Lender Group of any property of either or both of such parties should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, and other voidable or recoverable payments of money or transfers of property (collectively, a "Voidable Transfer"), and if the Lender Group is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lender Group is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys fees of the Lender Group related thereto, the liability of Borrowers or such guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

**18.7 Integration.** This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

**18.8 Parent as Agent for Borrowers.** Each Borrower hereby irrevocably appoints Parent as the borrowing agent and attorney-in-fact for all Borrowers (the “Administrative Borrower”) which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (i) to provide Agent with all notices with respect to Advances and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and (ii) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Advances and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral of Borrowers in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Lender Group shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce the Lender Group to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Borrower or by any third party whosoever, arising from or incurred by reason of (a) the handling of the Loan Account and Collateral of Borrowers as herein provided, (b) the Lender Group's relying on any instructions of the Administrative Borrower, or (c) any other action taken by the Lender Group hereunder or under the other Loan Documents, except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this Section 18.8 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be.

***[Remainder of this page intentionally left blank]***

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth in the first paragraph of this Agreement.

**THE CHILDREN'S PLACE RETAIL STORES, INC.**, a Delaware corporation

By: /s/ Seth Udasin
Name: Seth Udasin
Title: Vice President, Chief Financial Officer and Treasurer

**THE CHILDREN'S PLACE SERVICES COMPANY LLC**, a Delaware limited liability company

By: /s/ Seth Udasin
Name: Seth Udasin
Title: Vice President, Chief Financial Officer and Treasurer

**WELLS FARGO RETAIL FINANCE, LLC**, a Delaware limited liability company, as Agent and as a Lender

By: /s/ David Molinario
Name: David Molinario
Title: Vice President

**CONGRESS FINANCIAL CORPORATION (NEW ENGLAND)**, a Massachusetts corporation, as Documentation Agent and as a Lender

By: /s/ Christopher S. Hudik
Name: Christopher S. Hudik
Title: First Vice President

**LASALLE RETAIL FINANCE**, a Division of LaSalle Business Credit, LLC, as Agent for Standard Federal Bank National Association

By: Matthew D. Potter
Name: Matthew D. Potter
Title: Assistant Vice President

**WEBSTER BUSINESS CREDIT CORP.**, as Assignee of Whitehall Business Credit Corporation

By: /s/ Evan Israelson
Name: Evan Israelson
Title: Vice President

**LICENSE AND CONDUCT OF BUSINESS AGREEMENT**

**dated as of November 21, 2004**

**by and among**

**TDS FRANCHISING, LLC,**

**THE DISNEY STORE, LLC**

**and**

**THE DISNEY STORE (CANADA) LTD.**

# LICENSE AND CONDUCT OF BUSINESS AGREEMENT

**THIS LICENSE AND CONDUCT OF BUSINESS AGREEMENT** (this "**Agreement**"), dated as of November 21, 2004 (the **"Effective Date**"), is made and entered into by and among TDS Franchising, LLC, a California limited liability company ("**TDSF**"), The Disney Store, LLC, a California limited liability company ("**TDS USA**"), and The Disney Store (Canada) Ltd., a corporation incorporated under the laws of the Province of Ontario ("**TDS Canada**" and, together with TDS USA, "**Licensee**"). Each of TDSF and Licensee may be referred to herein as a "**party**" or, collectively, as the "**parties**."

W I T N E S S E T H:

WHEREAS, pursuant to an Acquisition Agreement, dated as of October 19, 2004 (the "**Acquisition Agreement**"), by and among Disney Enterprises, Inc. ("**DEI**"), Disney Credit Card Services, Inc., Hoop Holdings, LLC, a Delaware limited liability company ("**Licensee Parent**"), and Hoop Canada Holdings, Inc., a Delaware corporation ("**Canadian Parent**"), on the date hereof, Licensee Parent is acquiring all of the equity interests of TDS USA and Canadian Parent is acquiring all of the equity interests of TDS Canada; and

WHEREAS, Licensee is the tenant under certain leases and the owner, lessee or licensee of various other personal property assets that heretofore have been used in the operation of a chain of specialty retail stores known as the "*Disney Store*"; and

WHEREAS, Licensee desires to continue to operate such chain of specialty retail stores in a form, manner and style as provided for in this Agreement; and

WHEREAS, an Affiliate of TDSF has heretofore operated an online retail store located on the World Wide Web at www.disneystore.com; and

WHEREAS, Licensee desires to operate a new online retail store located on the World Wide Web at www.disneystore.com in a form, manner and style as provided for in this Agreement; and

WHEREAS, in order to enable Licensee to so operate such chain and such online retail store, Licensee desires to obtain from TDSF, and TDSF desires to grant to Licensee, certain rights in specified names, marks, symbols, logos, characters and other proprietary designations and intellectual property owned by or licensed to TDSF and its Affiliates, all subject to and in strict adherence to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, the parties agree as follows:

1. DEFINITIONS.

As used in this Agreement, the following defined terms shall have the respective meanings set forth below:

**"Acquisition Agreement"** shall have the meaning specified in the recitals hereto.

**"Action"** shall mean any action, lawsuit, charge, complaint, claim (including a letter authored by an attorney on behalf of his client alleging a Loss), counterclaim, arbitration, order, decree, judgment, investigation or other legal, administrative or Tax proceeding, whether civil or criminal, in law or in equity, or before any arbitrator or Governmental Entity.

**"Additional Merchandise Categories"** shall mean any merchandise category, other than the Pre-Approved Merchandise Categories, as TDSF shall approve in its sole discretion, which approval shall be sought in accordance with Section 9.19.3.

**"Affiliate"** shall mean, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such Person. For the purposes of this definition, the term "control" (including, with correlative meanings, the terms "controlling," "controlled by," and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting Securities, by Contract, or otherwise; provided, that (i) in no event shall Licensee be deemed an Affiliate of TDSF or vice versa, and (ii) for purposes of this Agreement, in no event shall any of the following Persons or any of their respective Affiliates be deemed an Affiliate of TDSF: (A) Euro Disney Investments, Inc., EDL S.N.C. Corporation,

Euro Disney Associes S.N.C., Euro Disneyland SNC, Euro Disney SCA, Euro Disneyland Participations S.A., Euro Disney S.A., EDL Holding Company, EDL Participations S.A., Centre de Congres Newport S.A.S., Euro Disneyland Imagineering S.a.r.l., Societe de Gerance d'Euro Disneyland SA and any other entity commonly known as "Euro Disney", "Euro Disneyland" or "Disneyland Resort Paris", and (B) Hongkong International Theme Parks Limited, Hong Kong Disneyland Management Limited, and Walt Disney Holdings (Hong Kong) Limited and any other entity commonly known as "Hong Kong Disney", "Hong Kong Disneyland" or "Disneyland Resort Hong Kong".

**"Agreement"** shall mean this Agreement, by and among the parties as amended, restated and/or supplemented from time to time.

**"Allocated Cost Methodology"** shall mean a calculation of costs and expenses of TDSF, its Affiliates and Representatives in accordance with the following: (a) personnel of TDSF and/or its Affiliates shall be billed at their direct costs (i.e., payroll costs, including payroll taxes and fringe benefit costs, for both employees and supervisors), plus twenty percent (20%) of all said direct costs to cover additional overhead; (b) materials shall be billed at the net cost to TDSF, its Affiliates and Representatives, plus five percent (5%) thereof to cover overhead; and (c) services other than those of personnel of TDSF and its Affiliates (e.g., contractors, subcontractors or other Representatives) shall be billed at TDSF's or its Affiliates' costs, plus five percent (5%) thereof to cover overhead.

**"Annual Business Plan"** shall have the meaning specified in Section 9.2.

**"Appeal Notice"** shall have the meaning specified in Section 21.23.4.

**"Appellate Arbitrators"** shall have the meaning specified in Section 21.23.5(e).

**"Appraiser"** and **"Appraisers"** shall have the respective meanings specified in Section 15.2.1(b).

**"Approval Item"** shall have the meaning specified in Section 9.19.3.

**"Approval Item Proposal"** shall have the meaning specified in Section 9.19.3(a).

**"Approval Requests"** shall have the meaning specified in Section 8.1.

**"Approved Template"** shall have the meaning specified in Section 5.2.1.

**"Arbitrable Disputes"** shall have the meaning specified in Section 21.23.2.

**"Arbitration Administrator"** shall have the meaning specified in Section 21.23.2.

**"Arbitration Parties"** shall have the meaning specified in Section 21.23.3.

**"Arbitrator"** shall have the meaning specified in Section 21.23.5(e).

**"Archives Location"** shall mean the physical library or other physical room or substantially comparable physical location, if any, located at 500 South Buena Vista Street, Burbank, California (or, if the headquarters of TWDC is moved to an alternative location, such alternative headquarters of TWDC), at which an Affiliate of TDSF maintains replicas of consumer products, souvenirs and other merchandise that principally bear, feature or incorporate one (1) or more Disney-Branded Properties and are used and maintained for archival purposes.

**"Article"** shall have the meaning specified in Section 5.1.

**"Audit Firm"** shall have the meaning specified in Section 5.1.4(a)(i).

**"Average Royalty Amount"** shall have the meaning specified in Section 7.2.

**"Bank One"** shall mean, collectively, Bank One, Delaware, N.A., a national banking association, and Bank One, N.A., a national banking association, and any successor to either of the foregoing.

**"Bank One Agreement"** shall mean the Co-Branded Credit Card Agreement, effective as of April 30, 2002, by and between Bank One and Disney Credit Card Services, Inc., a California corporation.

**"Banking Institution"** shall mean (i) any national bank or banking institution or trust company organized under the Laws of the United States or any state or territory of the United States or the District of Columbia, the business of which is substantially confined to banking and is supervised by the applicable federal, state or territorial banking commission or similar official; (ii) a savings and loan association, building and loan association, cooperative bank, homestead association or similar institution that is supervised and examined by state or federal authority having supervision over any such institution; or (iii) a company that is organized as an insurance company and whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and that is subject to supervision by the insurance commission or a similar official or agency of a state or territory or the District of Columbia; provided, that, for purposes of this Agreement, any Banking Institution that is owned, leased, licensed, controlled or operated by a Person who would be a Disqualified Person but for subparagraph (7) of the definition of "Disqualified Person" shall be excluded from the definition of "Banking Institution."

**"Banking Product"** shall mean bank savings and checking accounts, certificates of deposit, home equity loans, mortgages, online banking, student loans, consumer savings bonds, consumer and small business installment loans and consumer and small business lines of credit.

**"Barricade Procedures"** shall have the meaning specified in Section 9.3.1(c).

**"Board"** shall have the meaning specified in Section 9.13.1.

**"Board Communication"** shall have the meaning specified in Section 9.13.1(a).

**"Board Meetings"** shall have the meaning specified in Section 9.13.1.

**"Board Observer"** shall have the meaning specified in Section 9.13.1.

**"Board Special Committee Session"** shall have the meaning specified in Section 9.13.1(e).

**"Breach Threshold"** shall have the meaning specified in Section 13.14.

**"Business"** shall mean, collectively, all conduct in accordance with the provisions of this Agreement in connection with (i) operating the Facilities and the Internet Store under the *"Disney Store"* name (or, in the case of Outlet Facilities, the name *"Disney Store Outlet"* or such other name as shall be approved by each of TDSF and Licensee in its respective sole discretion), (ii) developing, manufacturing or causing the manufacture of, warehousing, distributing, offering for sale and selling Disney Merchandise solely within the Facilities and the Internet Store, (iii) marketing, advertising and promoting the Facilities, the Internet Store and the Disney Merchandise offered for sale within the Facilities and the Internet Store, (iv) corporate administration of the foregoing activities and (v) other comparable and ancillary activities related thereto.

**"Business Day"** shall mean any day except Saturday, Sunday or any day on which banks in the State of California are permitted to be closed.

**"Business Properties"** shall mean, collectively, all Leased Property, Other Real Property and any other real property used in the Business.

**"BVHE"** shall mean Buena Vista Home Entertainment, Inc., a wholly owned subsidiary of TWDC.

**"BVHE Merchandise"** shall have the meaning specified in Section 9.6.3(b).

**"Canada Reincorporation"** shall have the meaning specified in Section 9.12.1(a)(III).

**"Canada Reincorporation Date"** shall have the meaning specified in Section 9.12.1(a)(III).

**"Canadian Joinder"** shall have the meaning specified in Section 9.12.1(a)(II).

**"Canadian Limited Partner"** shall mean a Nova Scotia entity that is (or will be) a wholly owned Subsidiary of TDS Canada that has been (or will be) newly formed by TDS Canada for the sole purpose of holding the limited partner interests in New Canadian Limited Partnership. For purposes of clarification, Canadian Limited Partner is or will be a holding company whose sole operation consists of holding the limited partner interests in New Canadian Limited Partnership.

**"Canadian Parent"** shall mean Hoop Canada Holdings, Inc., a Delaware corporation, until the execution and delivery of the Canadian Joinder as contemplated by Section 9.12.1(a)(II), whereupon "Canadian Parent" shall refer individually and collectively to Hoop Canada Holdings, Inc., a Delaware corporation, and Canadian Limited Partner. For purposes of clarification, Hoop Canada Holdings, Inc. is a holding company whose sole operation consists of holding the Outstanding TDS Canada Securities.

**"Canadian Parent Securities"** shall mean Securities of Canadian Parent in whatever form.

**"CAP"** shall have the meaning specified in Section 5.1.4(a)(iii).

**"Chain Wide In Store Materials"** shall have the meaning specified in Section 5.2.2(b).

**"Character Appearances"** shall have the meaning specified in Section 4.11.

**"Character Properties"** shall mean any animated character names, designs and depictions that are Disney-Branded Properties (e.g., Mickey Mouse, Donald Duck, Cinderella, Dumbo, Snow White).

**"Charged Off Receivable"** shall have the meaning specified in Section 7.1.1.

**"Charitable Organization"** shall mean any charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code, provided such Charitable Organization is not in any way Affiliated with any Dabah Stockholders.

**"Closing Procedures Objection Notice"** shall have the meaning specified in Section 9.3.1(c).

**"Co-Branded Card Agreements"** shall mean, collectively, the Bank One Agreement and the Visa Agreement.

**"Code"** shall have the meaning specified in Section 5.1.4(a)(i).

**"Complaint"** shall have the meaning specified in Section 21.23.4.

**"Conceptual Materials"** shall have the meaning specified in Section 5.1.1(a).

**"Confidential Information"** shall have the meaning specified in Section 17.2.

**"Conforming Approved Template"** shall mean an Approved Template in which none of the Disney Properties included therein have been altered or modified in any manner (other than proportional increases or decreases in size to reflect different sized materials) and, except for (i) alterations or modifications to those features and information that were intended to be changed with each use thereof as specified by Licensee in connection with the submission of the applicable proposed Template pursuant to Section 5.2.1 and (ii) immaterial alterations or modifications that are not related to any Disney Property in any manner whatsoever (in the case of any dispute arising with respect to subparagraph (ii), such dispute shall be resolved by TDSF in its business judgment), none of the other elements of such Approved Template have been altered or modified in any manner.

**"Conforming Sizes"** shall have the meaning specified in Section 5.1.3(i).

**"Continuing Employee"** shall have the meaning specified in Section 9.4.2.

**"Contract"** shall mean any agreement, lease, license, evidence of debt, mortgage, hypothec, charge, deed of trust, note, bond, indenture, security agreement, commitment, instrument, understanding, or other contract, obligation or arrangement of any kind, whether written or oral, including, without limitation, all amendments, renewals, extensions or other modifications thereof.

**"Contract Year"** shall have the meaning specified in Section 2.1.

**"Contract Year Royalty Amount"** shall have the meaning specified in Section 7.2.

**"Contract Year Start Date"** shall have the meaning specified in Section 2.1.

**"Core Stores"** shall mean those Store Facilities designated as "Core Stores" under the Acquisition Agreement.

**"CPI"** shall mean the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984=100) Unadjusted, all items indexed, published by the Bureau of Labor Statistics (the **"BLS"**) United States Department of Labor, subject to the following conditions and contingencies: (i) in the event that the CPI is revised during the Term, such revised index shall be used to compute all CPI-based adjustments provided for in this Agreement, provided, that, should the revised index vary from the unrevised CPI to such an extent that the BLS publishes a conversion factor, that conversion factor shall be applied to the unrevised index in determining such adjustments; (ii) in the event the base reference used in computing the CPI is changed during the Term, the CPI-based adjustments provided for in this Agreement shall be calculated based on the new base year index, provided, that, in such event, TDSF shall apply a conversion factor to the prior base year index for the purpose of making the new index as comparable as practicable with the prior base year index; and (iii) if the CPI shall cease to be compiled and published altogether at any time during the Term, the parties hereto shall mutually agree upon and select an index as closely comparable thereto as is practicable, but if they are unable to mutually agree on an index within ten (10) Business Days, an index shall be selected for the parties hereto by the accounting firm of PricewaterhouseCoopers, which selection shall be binding on the parties.

**"CPI Adjustment Methodology"** shall mean, whenever an amount is required to be increased from one Contract Year to another by the amount of the CPI increase, such increase shall be calculated by multiplying such amount for the immediately preceding Contract Year by a fraction, the numerator of which is the CPI for the month just prior to the commencement of the forthcoming subject Contract Year (or, if there was no CPI published for such month, the CPI published for the most recent calendar month prior thereto for which such index was published shall be used), and the denominator of which is the CPI published for the same calendar month in the immediately prior Contract Year (or, if there was no CPI published for such month, the CPI published for the most recent calendar month prior thereto for which such index was published shall be used); provided, that in no event (i) shall such amount for any Contract Year be less than the applicable amount for the immediately preceding Contract Year and (ii) shall the amount for a Contract Year exceed one hundred three percent (103%) of the applicable amount for the immediately preceding Contract Year.

**"Cumulative Cash Flow"** shall mean, at any date, the cumulative Consolidated Net Income (as defined on Schedule 1(a)) of Licensee, Licensee Parent, Canadian Parent and their respective Subsidiaries from the commencement of the Term through the date of calculation, plus (i) without duplication and only to the extent reflected as a charge in the statement of such Consolidated Net Income, the amount of depreciation and amortization expense of Licensee, Licensee Parent, Canadian Parent and their respective Subsidiaries from the commencement of the Term through the date of calculation, minus (ii) (a) the amount of all capital expenditures made in connection with the Business, the Facilities and the Internet Store by Licensee, Licensee Parent, Canadian Parent and their respective Subsidiaries from the commencement of the Term through the date of calculation (but excluding any such capital expenditures that were funded by capital contributions by TCP or Licensee Parent to TDS USA in excess of the initial Fifty Million Dollar ($50,000,000) capital contribution made by TCP and Licensee Parent to TDS USA on or about the Effective Date pursuant to the TCP Guaranty and Commitment) and all Licensee Payments and Dividend Payments made or accrued but unpaid from the commencement of the Term through the date of calculation, in each case without duplication and only to the extent not already deducted in calculating such Consolidated Net Income, and (b) the positive or negative amount equal to the Working Capital as of the date of calculation minus the Effective Date Working Capital.

**"Cure"** or **"Cured"** shall mean that a breaching party under this Agreement has cured its respective breach of this Agreement to the satisfaction of the non-breaching party (as determined by the non-breaching party in its business judgment) (i) in the case of a Royalty Breach, within five (5) Business Days following written notice of such breach from the non-breaching party to the breaching party, (ii) in the case of a Licensee Infringing Use, within ten (10) Business Days following written notice of such breach from the non-breaching party to the breaching party (or, if such cure cannot reasonably be accomplished to the non-breaching party's satisfaction within such ten (10) Business Day period, then the breaching party shall in good faith have commenced such cure within such ten (10) Business Day period and shall thereafter have proceeded diligently to complete such cure to the non-breaching party's satisfaction (as determined by the non-breaching party in its business judgment) within twenty (20) Business Days following such written notice from the non-breaching party to the breaching party), and (iii) in the case of any breach other than a Royalty Breach or a Licensee Infringing Use, within twenty (20) Business Days following written notice of such breach from the non-breaching party to the breaching party (or, if such cure cannot reasonably be accomplished to the non-breaching party's satisfaction within such twenty (20) Business Day period, then the breaching party shall in good faith have commenced such cure within such twenty (20) Business Day period and shall thereafter have proceeded diligently to complete such cure to the non-breaching party's satisfaction (as determined by the non-breaching party in its business judgment) within thirty (30) Business Days following such written notice from the non-breaching party to the breaching party). The parties acknowledge and agree that, with respect to any Marketing Materials or Disney Merchandise that constitute a breach of this Agreement by Licensee and that were broadly distributed or disseminated to the general public prior to the date on which Licensee became aware of such breach of this Agreement, Licensee shall not be required to collect or recover such publicly distributed Marketing Materials or Disney Merchandise from the general public in order to Cure the respective breach; provided that (i) Licensee shall be required to immediately cease any further distribution thereof to the general public (including, without limitation, by collecting and recovering such Marketing Materials or Disney Merchandise from the Facilities or any other locations that are readily accessible to Licensee without undue cost or burden) and (ii) the foregoing shall not relieve Licensee of any obligations with respect to the foregoing under applicable Law, including, without limitation, any recall obligations that may arise with respect to any Disney Merchandise, or any other obligations arising under this Agreement with respect to such breach.

**"Current Negotiations"** shall have the meaning specified in Section 3.2.

**"Customer Data"** shall have the meaning specified in Section 10.1.

**"Customer Elections"** shall mean any specific requests, preferences, elections or other expressions of consent or non-consent stated or made by any customers (e.g., "opt-in" or "opt-out" elections) in connection with the Business.

**"Dabah Stockholders"** shall mean Ezra Dabah, his spouse or former spouse, his lineal or legally adopted descendants or ancestors (and their spouses), the trustee of a trust for the principal benefit of one (1) or more of the foregoing Persons, other comparable estate planning instruments or entities for the principal benefit of any of the foregoing Persons, and the respective Affiliates of the foregoing Persons.

**"Data Transfer"** shall have the meaning specified in Section 10.2.1.

**"DDM Business"** shall have the meaning specified in Section 6.1.5.

**"Debt Facilities"** shall have the meaning specified in Section 9.17.2(b).

**"DEI"** shall have the meaning specified in the recitals hereto.

**"Department Store"** shall mean a retail store (i) offering a variety of products organized by department (e.g., men's clothing, women's clothing, children's clothing, housewares, jewelry, leather goods, furniture, home electronics, etc.), (ii) with an average store size of not less than 40,000 and not more than 300,000 gross leaseable square feet, and (iii) generally offering merchandise on a full-retail pricing model rather than a discount or warehouse pricing model, except for periodic promotional and seasonal sales. As of the Effective Date, examples of "Department Stores" shall be deemed to include Sears, JC Penney, Macy's, Lord & Taylor, Marshall Fields, Filenes, Bloomingdale's and Nordstrom.

**"Design Modifications"** shall have the meaning specified in Section 9.19.2.

**"Design Proposal"** shall have the meaning specified in Section 9.19.2(a).

**"Designated Facilities"** shall have the meaning specified in Section 15.1.1.

**"Designated WDW Stores"** shall have the meaning specified in Section 6.1.1.

**"Disney Animated Characters"** shall have the meaning specified in Section 4.11.

**"Disney-Branded Properties"** shall mean (i) the *"Disney Store"* name, (ii) the names, designs and depictions of the animated characters set forth on Schedule 1(b), and (iii) whether or not included in the preceding subparagraph (ii), all current and future animated character names, designs and depictions and properties featured in the Motion Picture Properties, the Publishing Properties, the Television Properties and the Theatrical Properties, together with all Trademarks (including the name "Disney") associated with each of the foregoing; provided, that, subject to Section 4.9, with respect to the preceding subparagraphs (ii) and (iii), (I) any such animated character name, design or depiction or property shall not be a Disney-Branded Property hereunder or shall cease to be a Disney-Branded Property hereunder if it is not, or it ceases to be, owned and controlled by or licensed to TDSF

or any of its Affiliates in a manner that, in TDSF's or one (1) or more of its Affiliates' judgment in its sole discretion, entitles and authorizes TDSF to include such animated character name, design or depiction or property hereunder for use on or in connection with the Licensed Materials, and (II) the extent to which any such animated character name, design or depiction or property is included hereunder as a Disney-Branded Property may be limited by (a) restrictions on categories of merchandise with which, time periods during which and territories in which such Disney-Branded Property may be used (provided that such restrictions have been imposed by a third party) and (b) prohibitions against the use of certain art styles, depictions and/or illustrations of or in connection with such Disney-Branded Property. For purposes of clarification and without limitation, "Disney-Branded Properties" shall not include any character name, design or depiction or property that is owned, licensed or otherwise controlled by TDSF or any of its Affiliates under any name, brand, trademark, logo, symbol or other proprietary designation that does not incorporate the "Disney" name, such as, by way of illustration and not limitation, ABC, Miramax, Touchstone, Baby Einstein, Family Fun and ESPN.

**"Disney Competitive Business"** shall mean any business that competes, in whole or in part, directly or indirectly, with (i) the motion picture production, motion picture distribution, television and/or radio programming, television and/or radio network, television and/or radio station, Theme Park, cruise line, hotel, resort or animated character-based consumer products business of TDSF or its Affiliates, or (ii) any other media or entertainment business or other material division or portion of the present or future business of TDSF or any of its Affiliates not covered by the preceding subparagraph (i); provided that a Disney Competitive Business that competes only with a business of TDSF or its Affiliates identified in the preceding subparagraph (ii) (and not in the preceding subparagraph (i)) shall not be deemed to constitute a Disney Competitive Business hereunder if, during the most recently completed fiscal year of such Disney Competitive Business, it generated less than One Million Dollars ($1,000,000) of revenues from such competing business.

**"Disney Dollars"** shall mean instruments commonly referred to and known as of the Effective Date as "Disney Dollars" that may be purchased from TDSF or its Affiliates and used as a method of payment comparable to cash to purchase a variety of products and services at certain venues owned, leased, licensed, controlled and/or operated by TDSF or its Affiliates, any modifications or replacements of the foregoing and any comparable instruments created by TDSF or its Affiliates after the Effective Date.

**"Disney Extended Non-Core Store Lease Agreement"** shall mean the Lease Agreement for any Non-Core Store with respect to which the term of such Lease Agreement was extended by DEI without the approval of Licensee Parent pursuant to DEI's rights under Section 6.7.1(b)(i)(B)(x) of the Acquisition Agreement; provided that "Disney Extended Non-Core Store Lease Agreements" shall not under any circumstances include (i) any Lease Agreement for a Non-Core Store that was approved by Licensee Parent in accordance with the terms of the Acquisition Agreement or (ii) any amendment, modification, extension, renewal or replacement of a Disney Extended Non-Core Store Lease Agreement that may occur following the Effective Date.

**"Disney Guarantee"** shall mean the "Guarantee by Disney Worldwide Services, Inc." attached hereto following the signature page hereof.

**"Disney-Guaranteed Lease"** shall have the meaning specified in Section 9.7.1(g).

**"Disney IP Claim"** shall mean any claim or challenge (formal or informal, written or oral), action, complaint, charge, investigation, suit or other proceeding, whether civil or criminal, in law or in equity, or before any arbitrator, mediator or Governmental Entity, including, without limitation, any claims of infringement and any proceedings before the U.S. Patent and Trademark Office, relating to or arising out of or affecting the Disney Properties, the Licensed Materials or any other name, brand, trademark, logo, symbol, character or other proprietary designation or intellectual property of TDSF or its Affiliates, including, without limitation, (i) claims that any of the foregoing properties infringe the intellectual property rights of another Person, (ii) claims that any other Person's products or activities infringe on any of the foregoing properties, and (iii) claims arising from the use of any of the foregoing properties whether by Licensee, TDSF or their respective Affiliates.

**"Disney Merchandise"** shall mean consumer products and merchandise that (i) are developed by or on behalf of Licensee under and in strict accordance with the terms of this Agreement, (ii) are products contained within one of the Pre-Approved Merchandise Categories or Additional Merchandise Categories, (iii) bear, feature or incorporate one (1) or more of the Disney Properties and do not bear, feature or incorporate any character, proprietary designation or intellectual property of any other Person, provided, that, at any given time during the Term, up to ten percent (10%) of all SKUs of consumer products and merchandise then offered for sale in the Facilities and the Internet Store may consist of merchandise that does not bear, feature or incorporate one (1) or more of the Disney Properties (although all such merchandise shall bear a *"Disney Store"* hang-tag or other identification that identifies it as *"Disney Store"* merchandise), which consumer products and merchandise shall nonetheless be deemed to be "Disney Merchandise" hereunder so long as such consumer products and merchandise otherwise comply with subparagraphs (i), (ii), (iii) and (iv) of this definition and are complementary in nature to the other Disney Merchandise (i.e., designed to be used or worn in a coordinated manner together with other Disney Merchandise), and (iv) are, as determined by TDSF in its sole discretion, legally authorized and entitled to be labeled with and bear the "Disney" name (unless such product or merchandise bears, features or incorporates only Non-Disney-Branded Properties, in which case it shall be labeled with and bear such name(s) as TDSF shall designate in its sole discretion). In addition, "Disney Merchandise" shall be deemed to include all inventories of merchandise that bears, features or incorporates one (1) or more Disney Properties that is owned or on order by or in transit to Licensee as of the Effective Date (but not developed by Licensee hereunder).

**"Disney Privacy Policy"** shall mean the consumer data privacy policy established by TDSF and its Affiliates, as such policy may be amended, modified or replaced from time to time.

**"Disney Product Guidelines"** means the Disney Product Guidelines of TWDC and its Affiliates, consisting of rules, regulations, procedures and other guidelines with respect to product safety, including product safety requirements and obligations designed to protect the image, reputation and brand of the Disney Properties, as in effect as of the Effective Date and as provided to Licensee by TDSF prior to the Effective Date, and any successor thereto or replacement thereof. The Disney Product Guidelines may be amended or modified by TWDC or its Affiliates from time to time in their sole discretion; provided that no such amendment or modification shall be effective for purposes of this Agreement unless such amendment or modification is also imposed upon, to the extent permitted by applicable Law, (i) all retail locations that are owned and operated by TWDC or its Affiliates and (ii) all Other Disney Store Operators (but such amendment or modification need not be imposed upon Other Disney Licensees).

**"Disney Properties"** shall mean, collectively, Disney-Branded Properties, Non-Disney-Branded Properties and the TDS Internet Domains.

**"Disney Reciprocal Return"** shall have the meaning specified in Section 9.9.5.

**"Disney Retained Stores"** shall mean those *"Disney Store"* facilities identified as "Disney Retained Stores" in the Acquisition Agreement, which were retained by Affiliates of TDSF in connection with the sale of the equity interests in TDS USA and TDS Canada to Licensee Parent and Canadian Parent, respectively, pursuant to the Acquisition Agreement.

**"Disney Severance Plan"** shall mean the Severance Pay Plan of TWDC.

**"Disney Stored Value Cards"** shall have the meaning specified in Section 9.9.11.

**"Disney's Visa Card"** shall mean the consumer, small business and/or commercial credit or charge cards issued pursuant to the Bank One Agreement that operate on the Visa payment clearing network and that feature or display one (1) or more of the names, marks, symbols, logos, characters or other proprietary designations or intellectual property of TDSF or any of its Affiliates, including the name "Disney," and any successor to or replacement of such credit or charge cards.

**"Disney's Visa Reward Instrument"** shall have the meaning specified in Section 9.8.2(a)(vi).

**"DISNEYLAND Resort"** shall mean the entertainment, recreation and lodging complex located in Anaheim, California, known as DISNEYLAND® Resort, one of the principal features of which is the operation of two (2) separately gated theme and amusement parks known as DISNEYLAND® park and DISNEY'S CALIFORNIA ADVENTURE™ theme park.

**"DISNEYLAND Resort PARIS"** shall mean the entertainment and recreation complex located in Marne-La-Vallèe, France, one of the principal features of which is the operation of two (2) separately gated theme and amusement parks known as DISNEYLAND® theme park and the WALT DISNEY STUDIOS® theme park.

**"Disqualified Person"** shall mean (i) any Person or group of Persons who (by itself or through its Affiliates) owns, leases, licenses, operates or otherwise engages in, in whole or in part, directly or indirectly, a Disney Competitive Business; (ii) any Person or group of Persons who does not possess the requisite experience or expertise in the business of retail sales of consumer merchandise to enable such Person to operate the Business in the manner contemplated and required by this Agreement; (iii) any Person or group of Persons whose financial condition, results of operations, sources of liquidity and/or prospects are insufficient or inadequate to enable such Person, during the Term, to operate the Business in accordance with, and to fulfill its other obligations under, this Agreement, the TCP Guaranty and Commitment and any other Contracts entered into in connection herewith or therewith; or (iv) any Person or group of Persons (together with its Affiliates) whose association with the Business, the Facilities, the Internet Store, Licensee, TDSF or their respective Affiliates, businesses, assets or properties as a result of the ownership of Licensee Securities, Licensee Affiliate Securities, TCP Securities or TCP Affiliate Securities or as a source or provider of liquidity under the Liquidity Plan (a) may, as determined by TDSF in its business judgment, be expected to violate, constitute a default under or breach in any material respect, or, even if not constituting an actual violation, default or breach, may be expected to materially conflict with or impair the rights, benefits or value accruing to Licensee, TDSF or their respective Affiliates under, any material Contract to which any of Licensee, TDSF or their respective Affiliates is a party or under which any of their properties or assets are bound, or (b) may, as determined by TDSF in its sole discretion, be expected to be injurious to, adversely impact or be inconsistent with, in any material respect, the image, reputation, appearance or quality of, or may impair or adversely impact, in any material respect, the goodwill associated with, the Disney Properties, the Licensed Materials or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of Licensee, TDSF or their respective Affiliates; provided, that:

(1) a Person or group of Persons that, together with its Affiliates taken as a whole, either (x) is engaged principally in the business of retail sales of consumer merchandise and does not offer character-based consumer merchandise in more than fifteen percent (15%) of the aggregate retail merchandising space (in square feet) that is open to the public (i.e., excluding stock rooms, restrooms and other non-public or non-retail space) within any store or facility owned, leased, licensed, controlled or operated by such Person or group of Persons, or (y) engages in a Disney Competitive Business in no manner whatsoever other than the ownership of no more than five percent (5%) of the voting securities of a public company that is engaged in a Disney Competitive Business, shall not be deemed to be engaged in a Disney Competitive Business under the preceding subparagraph (i);

(2) with respect to the condition under the preceding subparagraph (ii) pertaining to the possession of the requisite experience or expertise in the business of retail sales of consumer merchandise, (A) in the case of a Transfer of TCP Securities or TCP Affiliate Securities, the absence of such experience and expertise shall only make the acquirer of such TCP Securities or TCP

Affiliate Securities a Disqualified Person if such acquirer is or becomes the Largest TCP Stockholder, the Second Largest TCP Stockholder, the Largest TCP Affiliate Stockholder or the Second Largest TCP Affiliate Stockholder, (B) a Person or group of Persons shall be deemed to have such experience and expertise if the aggregate revenues of such Person or group of Persons, together with its Affiliates taken as a whole, during its most recently completed fiscal year prior to the date of determination hereunder, either (x) were at least fifty percent (50%) comprised of retail sales of consumer merchandise and included at least Five Hundred Million Dollars ($500,000,000) of retail sales of consumer merchandise or (y) included at least One Billion Dollars ($1,000,000,000) of retail sales of consumer merchandise, and (C) a private equity fund that is engaged in the business of creating, maintaining and managing a diversified portfolio of investments shall be deemed to have such experience and expertise if, as of the date of determination hereunder, it had at least fifty percent (50%) or more of its aggregate funds under management invested in Persons or groups of Persons meeting the requirements contained in either of the preceding subparagraphs (x) or (y) of the preceding subparagraph (B);

(3) the preceding subparagraph (iii) shall not apply with respect to a Person (or group of Persons) owning TCP Securities or TCP Affiliate Securities but not Licensee Securities or Licensee Affiliate Securities;

(4) for purposes of the preceding subparagraph (iv)(a), a Contract shall be considered "material" if it is material in either a quantitative manner (e.g., constituting more than two percent (2%) of a Person's revenues or cash flows from operations) or a qualitative manner (e.g., impacting more than one (1) business unit or division of a Person, the subject of material media or consumer attention, a source of brand prestige or favorable brand association, a basis for attracting other business or alliances, a long-term or long-standing arrangement, or other comparable qualitative factors);

(5) for purposes of the preceding subparagraph (iv)(b), TDSF acknowledges and agrees that, in making its determination in its sole discretion thereunder, it shall not use the criteria set forth in such subparagraph as a subterfuge to disguise an ulterior reason for determining that a Person is a "Disqualified Person," but rather TDSF shall base its determination thereunder solely on the criteria set forth in such subparagraph to assess whether the Person is appropriate for association with a family and children's entertainment brand such as "Disney," which would exclude, by way of example and without limitation, businesses that are associated with, relate to or promote tobacco, alcohol, firearms, pornography, drugs, violence or crime (e.g., certain videogames) or gambling;

(6) no Mutual Fund, Pension Fund or Eligible Investment Fund shall be or be deemed to be a Disqualified Person;

(7) a Banking Institution's ownership of debt Securities (including, without limitation, notes, bonds, debentures or other similar debt instruments) of TCP, Licensee Parent, Licensee, Canadian Parent or any of their respective Subsidiaries shall not be considered in determining whether such Banking Institution is a Disqualified Person; and

(8) in the event that any Banking Institution that is a provider of liquidity under the Liquidity Plan becomes a Disqualified Person following the date on which it originally became a provider of liquidity under the Liquidity Plan, Licensee shall have up to sixty (60) days from the date on which such Banking Institution became a Disqualified Person to eliminate or replace such Banking Institution as a provider of liquidity under the Liquidity Plan before such Banking Institution shall be deemed a Disqualified Person for all purposes of this Agreement.

**"Distinct Public Name"** shall mean (i) the names Hoop Holdings, LLC, Hoop Retail Stores, LLC (the proposed name of the successor upon merger of TDS USA), and Hoop Canada Holdings, Inc., in each case subject to the provisions of Section 9.12.3 with respect to the use of the name "Hoop" and variations thereof, and (ii) as determined by TDSF in its sole discretion, any other name, brand, trademark, logo, symbol or other proprietary designation that does not include, directly or indirectly, in full or abbreviated form, by way of acronym, slight modification or partial misspelling, or in any other confusingly similar manner, the term "Disney", "The Disney Stores" or "TDS" or any variation of any of the foregoing or any of the Disney Properties or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or any of its Affiliates.

**"Distribution Centers"** shall mean any and all distribution warehouses, centers or other comparable facilities used in connection with the shipping, receiving, storing, warehousing and distribution of goods, products and merchandise to, from or among the Facilities and the customers of the Internet Store.

**"Dividend Payment"** shall have the meaning specified in Section 9.13.3(b).

**"DTR License"** shall mean a license granted by TDSF or its Affiliates directly to a Person, which license authorizes such Person to create, design, source, manufacture, cause the manufacture of, offer for sale, sell and distribute consumer products featuring one (1) or more Character Properties through such Person’s retail stores, outlets or other retail channels of distribution.

**"DTR Notice"** shall have the meaning specified in Section 6.2.2(a).

**"DTR Product Category"** shall mean any specific category of consumer products set forth on Schedule 1(c), as such Schedule 1(c) may be amended from time to time with the approval of TDSF and Licensee in their respective sole discretion.

**"Effective Date"** shall have the meaning specified in the preamble to this Agreement.

**"Effective Date Working Capital"** shall mean, as of the last day of the Fiscal Quarter of Licensee in which the Subsequent Closing occurs, the sum of all current assets reflected on a consolidated balance sheet of Licensee, Licensee Parent, Canadian

Parent and their respective Subsidiaries prepared in accordance with GAAP, minus the sum of all current liabilities reflected on such consolidated balance sheet.

**"El Capitan"** shall mean the El Capitan Theater located at 6838 Hollywood Boulevard, Los Angeles, California.

**"Election Notice"** shall have the meaning specified in Section 15.1.3.

**"Eligible Investment Fund"** shall mean any Person that is an "investment company" within the meaning of the Investment Company Act of 1940 and the rules and regulations promulgated thereunder, but only if and for so long as such Person's investment in Licensee Securities, Licensee Affiliate Securities, TCP Securities or TCP Affiliate Securities is held solely for investment purposes (as a passive investor) and not for the purpose, or with the effect, of changing or influencing the control, management or policies of Licensee, Licensee Parent, Canadian Parent, any Subsidiary of Licensee, Licensee Parent or Canadian Parent, TCP or such TCP Affiliate or as a participant in any transaction having that purpose or effect; provided, that, for purposes of this Agreement, any Eligible Investment Fund that is sponsored, established, administered, issued, controlled, owned or operated by a Person who would be a Disqualified Person but for subparagraph (6) of the definition of "Disqualified Person" shall be excluded from the definition of "Eligible Investment Fund."

**"Emergency Arbitrator"** shall have the meaning specified in Section 21.23.7.

**"Employee Benefit Plans"** shall mean (i) any employee benefit plan within the meaning of Section 3(3) of ERISA, (ii) any similar employment, consulting, severance agreement, contract, commitment, program or other arrangement or policy (whether written or oral) providing for insurance coverage (including self-insured arrangements), workers' compensation, disability benefits, supplemental unemployment benefits, vacation benefits, fringe benefits, retirement benefits, life, health or accident benefits (including, without limitation, any "voluntary employees' beneficiary association" as defined in Section 501(c)(9) of the Internal Revenue Code providing for the same or other benefits), or profit-sharing, deferred compensation, bonuses, stock options, stock appreciation rights or other stock-based awards, or other forms of incentive compensation or post-retirement insurance, compensation or benefits, (iii) any Pension Fund, or (iv) any Multiemployer Plan.

**"Encumbrance"** shall mean any easement, encumbrance, security interest, lien, hypothec, charge, pledge, or comparable restriction, except for any restrictions on transfer generally arising under any applicable federal, state or provincial securities Law.

**"Environmental Laws"** shall mean all federal, state, provincial and local government or agency Laws relating to pollution or protection of human health and safety or the environment (including air, surface water, ground water, land surface and subsurface strata), including Laws relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation or handling of Hazardous Substances.

**"Equitable Action"** shall have the meaning specified in Section 21.21.2.

**"ERISA"** shall mean the Employee Retirement Income Security Act of 1974, as amended, and the related regulations and published interpretations.

**"Exercise Notice"** shall have the meaning specified in Section 2.2.1.

**"Existing DTR License"** shall have the meaning specified in Section 6.2.4.

**"Existing Restricted Name Agreement"** shall have the meaning specified in Section 6.1.7.

**"Facilities"** shall mean, collectively, all Store Facilities and all Outlet Facilities.

**"Facility Appraisal Value"** shall have the meaning specified in Section 15.2.1(e).

**"Facility Design Elements"** shall have the meaning specified in Section 9.3.6(a).

**"Federal Bankruptcy Code"** shall mean Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute or, with respect to any jurisdiction other than the United States, any other equivalent law of such jurisdiction.

**"FF&E Materials"** shall have the meaning specified in Section 4.1.

**"Financial Covenant"** shall have the meaning specified in Section 2.2.1(e).

**"Fiscal Quarter"** shall mean a fiscal quarter of any Fiscal Year of the applicable Person referred to in each instance in this Agreement.

**"Fiscal Year"** shall mean, in the case of TDSF, the fiscal year of TDSF and its Subsidiaries ending on September 30 of each calendar year or, if changed by TDSF, such other fiscal year as may be designated by TDSF in writing to Licensee, and, in the case of the Licensee Entities and the TCP Entities, the annual period consisting of a "retail" fiscal year and four "retail" fiscal quarters and twelve (12) Retail Months selected from time to time by each such Person as its fiscal year for accounting purposes in accordance with GAAP.

**"Floor Guarantee"** shall have the meaning specified in Section 7.2.

**"FMV Appraisal"** shall have the meaning specified in Section 15.2.1(e).

**"Five Year Date"** shall have the meaning specified in Section 9.17.2(b).

**"FY04 Cash Contribution"** shall mean the aggregate amount of all revenues generated from all sales of goods, products, merchandise, services or other items of any kind in the Non-Core Stores during the fiscal year ended October 2, 2004 minus the aggregate amount of all actual cash expenses related directly and solely to the operation of the Non-Core Stores incurred during the fiscal year ended October 2, 2004 (including, without limitation, all rent (including base rent and percentage rent or comparable payments if designated by a different name), common area maintenance charges, taxes and other amounts paid pursuant to the Lease Agreements for the Non-Core Stores, all expenses related to employees at the Non-Core Stores and merchandise inventories located within the Non-Core Stores (including, without limitation, freight-to-store expenses and merchandise shrinkage) and all cleaning, maintenance and repair expenses related to the Non-Core Stores), calculated by TDSF in good faith in accordance with past practice. For purposes of clarification, (i) depreciation and amortization expenses (with respect to the Non-Core Stores or otherwise), (ii) expenses related to capital improvements (at the Non-Core Stores or elsewhere), (iii) expenses related to the corporate headquarters or other corporate offices or corporate employees of TDSF or its Affiliates, (iv) expenses related to distribution operations or any distribution warehouses, centers or other comparable facilities used by TDSF or its Affiliates in connection with the shipping, receiving, storing, warehousing and distribution of goods, products and merchandise, (v) other corporate overhead expenses (including, without limitation, marketing expenses (other than in-store marketing expenses), income tax expense, interest expense, commissions, discounts and other fees and charges associated with indebtedness and amortization of intangibles (including, but not limited to, goodwill)), and (vi) expenses related to any other properties or operations of TDSF or its Affiliates (including, without limitation, the Core Stores and the Predecessor Disney Website) shall not be considered expenses related directly and solely to the operation of the Non-Core Stores for purposes of calculating FY04 Cash Contribution.

**"GAAP"** shall mean generally accepted accounting principles in the United States, as in effect from time to time, consistently applied.

**"General DTR License"** shall mean a DTR License under which TDSF or its Affiliates authorize the use of more than one (1) family of Character Properties in connection with the consumer products manufactured and sold thereunder. For purposes of clarification, a family of Character Properties generally shall consist of all Character Properties associated with a particular line of characters or featured in a particular Motion Picture Property, Publishing Property, Television Property or Theatrical Property. For purposes of illustration and without limitation, each animated motion picture or character line set forth in the left-hand column on Schedule 1(b) (e.g., Walt Disney's Cinderella, Disney's Beauty and the Beast, Disney's standard characters (which includes Mickey Mouse, Minnie Mouse, Donald Duck, Daisy Duck, Pluto and Goofy), the Winnie the Pooh line of characters, etc.) shall, in the aggregate, constitute one (1) family of Character Properties.

**"Gift Card"** shall mean any gift card, certificate or other redemption instrument, vehicle or methodology, whether in paper, plastic, electronic or other form, that may be used as a method of payment at the Facilities, the Internet Store or any retail locations owned, leased, licensed, controlled and/or operated by TDSF or its Affiliates, including, without limitation, the Disney Stored Value Cards.

**"Governing Documents"** shall mean, with respect to any Person, the charter documents (articles or certificate of incorporation or other), bylaws, operating agreements, partnership or limited partnership agreements, securityholders agreements and other governing documents and other Contracts pertaining to the management or operation of, or the ownership of any Securities of, such Person.

**"Governmental Entity"** shall mean any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state, provincial or local, or domestic or foreign, and any self-regulatory agency, such as the New York Stock Exchange or the Nasdaq Stock Market.

**"Guarantee Amount"** shall have the meaning specified in Section 7.2.

**"Guarantor"** shall have the meaning specified in the Disney Guarantee.

**"Guaranty Assumption"** shall mean an assumption by a Qualified Person of all (or such portion as shall be required by TDSF in its sole discretion) of the liabilities, duties and obligations (past, present and future) of TCP and Licensee Parent arising under the TCP Guaranty and Commitment and any related Contract entered into in connection therewith, such assumption to be in writing and in form and substance satisfactory to TDSF in its business judgment, provided, that no such Guaranty Assumption shall be deemed to relieve TCP or Licensee Parent of any of its liabilities, duties or obligations under the TCP Guaranty and Commitment unless TDSF shall elect, in its sole discretion, to release such parties from such liabilities, duties or obligations thereunder in writing, and, in the absence of any such written release, TCP and Licensee Parent shall remain jointly and severally liable, together with any party to a Guaranty Assumption, for all of their liabilities, duties and obligations thereunder.

**"Hardlines"** shall mean those categories of hardline consumer products set forth on Schedule 1(d), as such Schedule 1(d) may be amended from time to time with the approval of TDSF and Licensee in their respective sole discretion.

**"Hazardous Substances"** shall mean substances that are defined or listed in, or otherwise classified under, any applicable Laws as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances," or any other formulation

intended to define, list or classify substances by reason of deleterious properties such as ignitibility, corrosivity, reactivity, carcinogenicity, reproductive toxicity or "EP toxicity," and petroleum.

**"Hyperlink"** shall have the meaning specified in Section 9.3.2(b)(vii).

**"Ideas"** shall have the meaning specified in Section 17.2.

**"Identifiable Food Service Area"** shall have the meaning specified in Section 5.2.8(a).

**"ILS"** shall have the meaning specified in Section 5.1.4(a).

**"In Store Materials"** shall have the meaning specified in Section 5.2.1.

**"In Store Response Failure"** shall have the meaning specified in Section 5.2.2(b).

**"In Store Response Failure Fee"** shall have the meaning specified in Section 5.2.2(b).

**"Indebtedness"** shall have the meaning specified in Schedule 1(a).

**"Indemnified Party"** shall have the meaning specified in Section 12.3.1.

**"Indemnifying Party"** shall have the meaning specified in Section 12.3.1.

**"Independent Director"** shall mean a person who is a U.S. citizen (or with respect to any Licensee Entity organized in Canada or any province thereof, either a U.S. or a Canadian citizen), who is at least thirty (30) years old, and who shall not be, and shall not have been within the three (3) years prior to being selected as an Independent Director, either (i) a director, officer or employee of, or a relative (by birth, marriage or otherwise) of a director, officer or employee of, a Licensee Entity, a TCP Entity, TDSF or any of their respective Affiliates, (ii) a person who (individually or with any group of Persons) beneficially owns (within the meaning of Rule 13d-3 under the Securities Exchange Act) ten percent (10%) or more of any voting Securities of a Licensee Entity, a TCP Entity, TDSF or any of their respective Affiliates, or any relative (by birth, marriage or otherwise) of any such person, or (iii) a person who (A) has received, or whose relative (by birth, marriage or otherwise) has received, more than Fifty Thousand Dollars ($50,000) per year in direct compensation from a Licensee Entity, a TCP Entity, TDSF or any of their respective Affiliates, other than pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); (B) is an Affiliate of, or employed by, or whose relative (by birth, marriage or otherwise) is an Affiliate of, or employed in a professional capacity by, a present or former internal or external auditor of a Licensee Entity, a TCP Entity, TDSF or any of their respective Affiliates; (C) is employed, or whose relative (by birth, marriage or otherwise) is employed, as an executive officer of another company where any of the present directors, officers or employees of a Licensee Entity, a TCP Entity, TDSF or any of their respective Affiliates serve on that company's board or compensation committee; or (D) is a director, officer or employee, or whose relative (by birth, marriage or otherwise) is a director, officer or employee, of a company that makes payments to, or receives payments from, a Licensee Entity, a TCP Entity, TDSF or any of their respective Affiliates for property or services in an amount that, in any single Fiscal Year, exceeds the greater of (x) One Million Dollars ($1,000,000) and (y) two percent (2%) of such other company's consolidated gross revenues.

**"Initial Minimum Refurbishment Commitment"** shall have the meaning specified in Section 9.3.5(b).

**"Initial Model Design"** shall have the meaning specified in Section 9.19.2(d).

**"Initial Non-Core Stores Abatement Period"** shall have the meaning specified in Section 7.1.2.

**"Initial Term"** shall have the meaning specified in Section 2.1.

**"Insolvent"** shall mean (i) a Person has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or (ii) a Person's financial condition is such that the sum of its liabilities is greater than the sum of its assets determined in accordance with GAAP (except that, in the case of TDSF, the assets and liabilities of TDSF's ultimate parent entity, TWDC, shall be considered for purposes of such determination).

**"Internal Revenue Code"** shall mean the Internal Revenue Code of 1986, as amended.

**"Internet Start Date"** shall mean October 1, 2005.

**"Internet Store"** shall mean an online specialty retail store that (i) is located on the World Wide Web at the TDS Internet Domains or such other domain names or URLs as Licensee may request and TDSF may approve in its sole discretion, (ii) offers a variety of Disney Merchandise in a general emporium format, (iii) does not offer for sale, feature or sell any goods, products, merchandise, services or other items other than Disney Merchandise that (a) is then offered, (b) has been offered within the preceding twelve (12) Retail Months or (c) pursuant to the Quarterly Merchandise Plans for the applicable Contract Year shall be offered within the following six (6) Retail Months, in each case in at least one-third (1/3) of the Store Facilities (provided that the Internet Store may offer such Disney Merchandise consisting of apparel in sizes not available in any Store Facility so long as such sizes have been approved by TDSF pursuant to Section 5.1.3(i)), and (iv) is owned by Licensee and operated by Licensee under the *"Disney Store"* name in a form, manner and style that are approved by each of TDSF and Licensee in its respective sole discretion following the Effective Date or as are otherwise permitted by, and are in accordance with, the provisions of this Agreement.

**"Japan Disney Store Merchandise"** shall mean any Other Disney Store Merchandise that is developed by a Japan Disney Store Operator.

**"Japan Disney Store Operator"** shall mean any Other Disney Store Operator designated by TDSF or its Affiliates from time to time that operates one (1) or more retail stores under the *"Disney Store"* name in Japan.

**"Joint Advisory Committee"** shall have the meaning specified in Section 8.3.

**"Judgment Threshold"** shall have the meaning specified in Section 13.12.

**"Knowledge"** shall mean the actual knowledge of the applicable Person (if such Person is a natural person) or the actual knowledge of any executive officer of the applicable Person (if such Person is a corporation, partnership, limited partnership, limited liability company, trust or other form of legal entity).

**"Landlord"** shall have the meaning specified in Section 9.7.1(a).

**"Largest TCP Affiliate Stockholder"** shall mean, with respect to each Affiliate of TCP (other than Licensee, Licensee Parent, Canadian Parent and the Subsidiaries of Licensee, Licensee Parent and Canadian Parent), the Person or group of Persons whose beneficial ownership (within the meaning of Rule 13d-3 under the Securities Exchange Act) of voting TCP Affiliate Securities of such Affiliate of TCP entitles it to the largest vote in the election of the board of directors (or comparable governing body) of such Affiliate of TCP among all holders of TCP Affiliate Securities of such Affiliate of TCP.

**"Largest TCP Stockholder"** shall mean the Person or group of Persons whose beneficial ownership (within the meaning of Rule 13d-3 under the Securities Exchange Act) of voting TCP Securities entitles it to the largest vote in the election of TCP's board of directors (or comparable governing body) among all holders of TCP Securities.

**"Law"** or **"Laws"** shall mean any law, statute, order, decree, judgment, rule, regulation, code, administrative requirement, ordinance or other pronouncement of any Governmental Entity or having the effect of law in any jurisdiction, federal, state, provincial or local, foreign or domestic.

**"Lease Agreements"** shall mean the agreements, written or oral, express or implied, present or future, creating or regarding Licensee's rights to the Leased Property, including, without limitation, any addenda, riders, exhibits, schedules, amendments, extensions, waivers, modifications or replacements thereof. For purposes of clarification, "Lease Agreements" includes New Business Property Lease Agreements and Lease Extension Arrangements.

**"Lease Extension Arrangements"** shall mean any agreement or arrangement, written or oral, express or implied, that becomes effective after the Effective Date and extends the term of a Lease Agreement (including, without limitation, by renewal, amendment, extension, replacement or exercise of an option to extend).

**"Leased Property"** shall mean (a) any and all Facilities and (b) any real property other than a Facility of which fifty percent (50%) or more of such real property was, is or will be used by Licensee relating to, or associated with, the Business (e.g., a corporate headquarters or other office) in which, in the case of subparagraph (a) or (b), Licensee (i) had, has or will have an estate for years, a leasehold estate or a subleasehold estate, (ii) was, is or will become a tenant, lessee, subtenant, sublessee, landlord, lessor, sublandlord or sublessor or (iii) had, has or will have any options, rights of first refusal, expansion rights or other similar rights to enter into an estate for years, a leasehold estate or a subleasehold estate.

**"Lender Liquidation Period"** shall have the meaning specified in Section 16.5.

**"License Assumption"** shall mean an assumption by a Qualified Person of all (or such portion as shall be required by TDSF in its sole discretion) of the liabilities, duties and obligations (past, present and future) of Licensee arising under this Agreement and any related Contract entered into in connection herewith, such assumption to be in writing and in form and substance satisfactory to TDSF in its business judgment, provided, that no such License Assumption shall be deemed to relieve Licensee of any of its liabilities, duties or obligations under this Agreement unless TDSF shall elect, in its sole discretion, to release Licensee from such liabilities, duties or obligations hereunder in writing, and, in the absence of any such written release, TDS USA and TDS Canada shall remain jointly and severally liable, together with any party to a License Assumption, for all of their liabilities, duties and obligations hereunder.

**"License Encumbrance Agreement"** shall have the meaning set forth in Section 6.2.1.

**"Licensed Materials"** shall have the meaning specified in Section 4.1.

**"Licensee"** shall have the meaning specified in the preamble to this Agreement. As the context may require, "Licensee" shall be deemed to refer to TDS USA and/or TDS Canada.

**"Licensee Advisors"** shall have the meaning specified in Section 8.2.

**"Licensee Affiliate Securities"** shall mean Securities of Licensee Parent, Canadian Parent, any Subsidiary of Licensee Parent or Canadian Parent (other than Licensee) and any Subsidiary of Licensee, in whatever form.

**"Licensee Board"** and **"Licensee Boards"** shall have the respective meanings specified in Section 9.13.2.

**"Licensee Compensation Amount"** shall have the meaning specified in Section 15.2.3(a).

**"Licensee Employee"** shall have the meaning specified in Section 9.4.1.

**"Licensee Entities"** shall have the meaning specified in Section 9.13.1.

**"Licensee Infringing Use"** shall mean Licensee's use of any Disney Properties, Licensed Materials or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or any of its Affiliates (i) without the approval in writing of TDSF in accordance with this Agreement, (ii) in a manner that fails to comply in any respect with any approval in writing of TDSF granted in accordance with the terms of this Agreement or (iii) in a manner that violates or breaches any provision of this Agreement in any material respect, in the case of each of subparagraphs (i), (ii) and (iii), such uses shall be and be deemed to be an infringement of the rights of TDSF and/or its Affiliates in and to such Disney Properties, Licensed Materials and/or other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or any of its Affiliates.

**"Licensee Infringement/Breach Fee"** shall have the meaning specified in Section 21.24.1.

**"Licensee Infringement/Breach Fee Maximum Amounts"** shall have the meaning specified in Section 21.24.1.

**"Licensee Parent"** shall have the meaning set forth in the recitals hereto. For purposes of clarification, Licensee Parent is a holding company whose sole operation consists of holding the Outstanding TDS USA Securities.

"**Licensee Parent Securities**" shall mean Securities of Licensee Parent in whatever form.

**"Licensee Payments"** shall have the meaning specified in Section 7.3.

**"Licensee Percent LTM Sales"** shall mean, with respect to any proposed new DTR License to be granted by TDSF or its Affiliates after the Effective Date to a chain of Specialty Retail Stores, the percentage of Licensee's Net Retail Sales derived, during the full twelve (12) Retail Month period completed immediately preceding the Retail Month in which the DTR Notice pertaining to such proposed new DTR License is provided, from a particular Property-Product Combination authorized or to be authorized under such DTR License.

**"Licensee Reciprocal Return"** shall have the meaning specified in Section 9.9.5.

**"Licensee Securities"** shall mean Securities of TDS USA and/or TDS Canada in whatever form.

**"Liquidation Period"** shall have the meaning specified in Section 16.4.

**"Liquidators"** shall have the meaning specified in Section 6.3.

**"Liquidity Period"** shall have the meaning specified in Section 9.11.4.

**"Liquidity Plan"** shall have the meaning specified in Section 9.11.4.

**"Long-Term Lease"** shall mean any Lease Agreement with respect to a Facility that is not a Short-Term Lease.

**"Loss"** shall have the meaning specified in Section 12.1.

**"Loss Threshold"** shall have the meaning specified in Section 13.13.

**"Management Employees"** shall have the meaning specified in Section 9.4.4.

**"Manufacturers"** shall have the meaning specified in Section 5.1.4(a)(i).

**"Manufacturer's Agreement"** shall have the meaning specified in Section 5.1.4(a)(i).

**"Manufacturer's FAMA"** shall have the meaning specified in Section 5.1.4(a)(i).

**"Manufacturer's MOU"** shall have the meaning specified in Section 5.1.4(a)(i).

**"Marketing Materials"** shall have the meaning specified in Section 4.1.

**"Mass Merchandiser"** shall mean retail stores (i) offering either (x) a wide range of products within one product category or a small number of product categories (e.g., toys, sporting goods, home electronics, etc.) or (y) numerous categories of products organized by department (e.g., some or all of the following: men's clothing, women's clothing, children's clothing, housewares, jewelry, leather goods, furniture, home electronics, etc.), (ii) with an average store size of not less than fifty thousand (50,000) gross leaseable square feet, and (iii) generally offering merchandise on a "low-price" retail pricing model or a wholesale pricing model rather than a full-priced retail pricing model, which may (but need not) involve regular promotional and seasonal sales. As of the Effective Date, examples of "Mass Merchandisers" shall be deemed to include Wal-Mart, Target, Kmart, Toys "R" Us, Costco and Sam's Club.

**"Material Breach"** shall mean, excluding any Licensee Infringing Use, (i) the failure by either party in any material respect to perform any agreement, term, covenant or condition to be performed by such party under this Agreement or (ii) any breach by either party of any representation or warranty of such party under this Agreement in any material respect. For purposes of clarification, "Material Breach" shall include any Royalty Breach.

**"Maximum Guarantee Liability"** shall have the meaning specified in the Disney Guarantee.

**"Maximum Refurbishment Amount"** shall have the meaning specified in Section 9.19.2(e).

**"McDonald's Agreement"** shall mean that certain Participant Agreement dated as of December 8, 1996, between McDonald's Corporation and Disney Enterprises, Inc., as amended.

**"Measurement Period"** shall have the meaning specified in Section 2.2.1(a).

**"Minor Revision Approved Template"** shall mean an Approved Template in which the only alterations or modifications thereto (other than (i) alterations or modifications to those features and information that were intended to be changed with each use thereof as specified by Licensee in connection with the submission of the applicable proposed Template pursuant to Section 5.2.1 and (ii) immaterial variations that are not related to any Disney Property in any manner whatsoever (in the case of disputes arising with respect to this subparagraph (ii), such disputes shall be resolved by TDSF in its business judgment)) consist of minor revisions to the Disney Properties included therein or other elements thereof, as determined by TDSF in its sole discretion.

**"Model Design"** shall have the meaning specified in Section 9.19.2(d).

**"Monogram Agreement"** shall mean the Amended and Restated Credit Card Program Agreement dated as of February 11, 1994, between Monogram Bank and Disney Credit Card Services, Inc., as amended.

**"Monogram Bank"** shall mean Monogram Credit Card Bank of Georgia, a Georgia banking corporation.

**"Monogram-Disney Card"** shall mean the private label credit and charge cards that are issued by Monogram Bank pursuant to the Monogram Agreement, that feature one (1) or more of the names, marks, symbols, logos, characters and other proprietary designations or intellectual property of TDSF or any of its Affiliates, including the name "Disney", and that are accepted as a method of payment at the Facilities, the Internet Store and certain business operations of TDSF or its Affiliates.

**"Monthly Facilities Royalty Amount"** shall have the meaning specified in Section 7.1.1.

**"Monthly Internet Store Royalty Amount"** shall have the meaning specified in Section 7.1.1.

**"Monthly Royalty Amount"** shall mean the Monthly Facilities Royalty Amount plus the Monthly Internet Store Royalty Amount.

**"Motion Picture Properties"** shall mean children-oriented animated motion pictures that are produced and/or distributed (whether through movie theaters or home entertainment devices such as video tapes and digital video discs) by TDSF or any of its Affiliates under the "Walt Disney Pictures" or "Disney/Pixar" banner or any other banner that incorporates the name "Disney" or any variation thereof, but specifically excluding any other theatrical motion pictures that are produced and/or distributed by TDSF or any of its Affiliates, such as, by way of illustration and without limitation, motion pictures produced and/or distributed under the Touchstone and Miramax banners.

**"Multiemployer Plan"** shall mean any "multiemployer plan" as defined in Section 4001(a)(3) of ERISA that is (or was) subject to Title IV of ERISA.

**"Mutual Fund"** shall mean any open-end investment fund commonly known as a "mutual fund" that combines the funds of numerous individual investors, invests such funds in a variety of securities, and enables each individual investor to participate on a pro rata basis in all such investments through such investor's interest in the mutual fund; provided, that, for purposes of this Agreement, any Mutual Fund that is sponsored, established, administered, controlled or operated by a Person who would be a Disqualified Person but for subparagraph (6) of the definition of "Disqualified Person" shall be excluded from the definition of "Mutual Fund."

**"NDB Stores"** shall mean specialty retail stores that are primarily focused on the sale of Softlines and/or Toys/Plush that bear, feature or incorporate names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property that are owned, licensed or otherwise controlled by TDSF and/or any of its Affiliates other than Disney-Branded Properties, including, without limitation, all Non-Disney-Branded Properties, but specifically excluding any character names, designs or depictions or properties that are owned, licensed or otherwise controlled by TDSF or its Affiliates under any name, brand, trademark, logo, symbol or other proprietary designation of Miramax (by way of illustration and without limitation, a "Family Fun Store").

**"Net Retail Sales"** shall have the meaning specified in Section 7.1.1.

**"New Business Property"** shall mean any Facility, Distribution Center, corporate office or other location, store, facility or real property used in the Business that is leased, purchased or otherwise acquired by Licensee or any of its Affiliates after the Effective Date.

**"New Business Property Lease Agreements"** shall mean Lease Agreements pertaining to New Business Properties.

**"New Canadian Limited Partnership"** shall have the meaning specified in Section 9.12.1(a)(II).

**"New Sales Medium"** shall have the meaning specified in Section 9.1.1.

**"New Store Construction"** shall have the meaning specified in Section 9.19.2.

**"Non-Conforming Approved Template"** shall mean an Approved Template in which any of the Disney Properties included therein or any other elements thereof have been altered or modified in any manner, other than (i) alterations or modifications to those features and information that were intended to be changed with each use thereof as specified by Licensee in connection with the submission of the applicable proposed Template pursuant to Section 5.2.1, (ii) immaterial variations that are not related to any Disney Property in any manner whatsoever (in the case of disputes arising with respect to this subparagraph (ii), such disputes shall be resolved by TDSF in its business judgment) or (iii) minor revisions to the Disney Properties included therein or other elements thereof (in the case of this subparagraph (iii) as determined by TDSF in its sole discretion).

**"Non-Conforming Sizes"** shall have the meaning specified in Section 5.1.3(i).

**"Non-Core Stores"** shall mean those Store Facilities designated as "Non-Core Stores" under the Acquisition Agreement.

**"Non-Disney-Branded Properties"** shall mean, excluding Disney-Branded Properties, those children-oriented animated character names, designs and depictions and/or properties, together with their related Trademarks, that are (i) owned and controlled by TDSF or any of its Affiliates or licensed to TDSF or any of its Affiliates in a manner that, in TDSF's or one (1) or more of its Affiliates' judgment in its sole discretion, entitles and authorizes TDSF to include such animated character names, designs or depictions or properties hereunder for use on or in connection with the Licensed Materials, (ii) determined by TDSF, in its sole discretion, to be appropriate to offer, sell and distribute through the Facilities and the Internet Store, whether based on brand considerations, customer demand, release schedules for entertainment properties, tie-ins with Disney-Branded Properties or such other factors as TDSF may wish to consider in its sole discretion (provided, that (x) TDSF shall not be required to provide any reason to Licensee for its determination and (y) in making such determination, TDSF will not treat Licensee less favorably in any material respect than any Other Disney Store Operator has been treated by TDSF or its Affiliates with respect to the applicable Non-Disney-Branded Property), and (iii) designated from time to time in writing by TDSF, in its sole discretion, as "Non-Disney-Branded Properties" hereunder, which designation may, in TDSF's sole discretion, include a specified time period, specified usage or other comparable limitations; provided, that, subject to Section 4.9, (I) any such animated character name, design or depiction or property shall cease to be a Non-Disney-Branded Property hereunder at such time as (a)(1) it is no longer owned and controlled by or licensed to TDSF or any of its Affiliates in a manner that, in TDSF's or one (1) or more of its Affiliates' judgment in its sole discretion, entitles and authorizes TDSF to include such animated character name, design or depiction or property hereunder for use on or in connection with the Licensed Materials, or (2) it is, in TDSF's judgment in its sole discretion, otherwise inconsistent with or inappropriate for the image, reputation and brand of a specialty retail store operated under the *"Disney Store"* name, or (b) TDSF shall specify in writing to Licensee (provided, that, in making its determination or specification under the preceding subparagraph (a)(2) or (b), TDSF will not treat Licensee less favorably in any material respect than any Other Disney Store Operator has been treated by TDSF or its Affiliates with respect to the applicable Non-Disney-Branded Property), and (II) the extent to which any such animated character name, design or depiction or property is included hereunder as a Non-Disney-Branded Property may be limited by the rights of any third parties in or to such Non-Disney-Branded Property, which limitations may include, by way of example and without limitation, restrictions on categories of merchandise with which such Non-Disney-Branded Property may be used, time periods during which and territories within which such Non-Disney-Branded Property may be used, prohibitions against the use of certain art styles, depictions and/or illustrations of or in connection with such Non-Disney-Branded Property, exclusive manufacturing rights granted to certain manufacturers with respect to specified categories of consumer products, or other rights or restrictions imposed by such third parties. Notwithstanding the foregoing, under no circumstances shall "Non-Disney-Branded Properties" include any character names, designs or depictions or properties that are owned, licensed or otherwise controlled by TDSF or its Affiliates under any name, brand, trademark, logo, symbol or other proprietary designation of Miramax. Schedule 1(e) sets forth the Non-Disney-Branded Properties available as of the Effective Date for Licensee's use in connection with the Licensed Materials in accordance with the terms of this Agreement, subject to TDSF's rights under the foregoing definition of Non-Disney-Branded Properties and Section 4.9.

**"Non-Disney Technology and Elements"** shall have the meaning specified in Section 11.1.

**"Non-DTR Products"** shall have the meaning specified in Section 6.2.4.

**"Non-Signatory Dispute"** shall have the meaning specified in Section 21.23.15.

**"Non-U.S. Strategic Alliances"** shall have the meaning specified in Section 9.8.4.

**"NWC Permitted Dividend Amount"** shall mean the amount, if positive and if any, equal to (i) the "Buyer Working Capital Amount" as defined in the Acquisition Agreement, if any, minus (ii) any payments by DEI (or its Affiliates) to Licensee Parent (or its Affiliates) pursuant to the working capital adjustment provisions of Section 2.3 of the Acquisition Agreement.

**"Obligations"** shall have the meaning specified in the Disney Guarantee.

**"Opening/Closing Proposal"** shall have the meaning specified in Section 9.19.1(a).

**"Operating Manual"** shall have the meaning specified in Section 9.18.

**"Original Debt Facility"** shall mean the Loan and Security Agreement between Licensee and Wells Fargo Retail Finance, LLC, dated on or about the Effective Date, in its original form prior to any amendment, modification or other change thereto.

**"Original Lease Term"** shall mean, with respect to any Core Store, Non-Core Store or Disney-Guaranteed Lease, the remaining term of the Lease Agreement for such Core Store, Non-Core Store or Disney-Guaranteed Lease, as applicable, in each case as it existed as of the Effective Date, without regard to any renewal or other extension of such term occurring after the Effective Date, whether resulting from any amendment or modification of such Lease Agreement, the exercise of any option to extend or renew such Lease Agreement, the continuation of such Lease Agreement on a month-to-month basis or any other action taken by any party to such Lease Agreement.

**"Original Retail Price"** shall mean, with respect to any Disney Merchandise, the retail price at which such Disney Merchandise is offered to the public on the date on which such Disney Merchandise is first so offered in the Facilities and/or the Internet Store, prior to any discount, markdown or other price reduction.

**"Other Disney Licensee"** shall mean any Person (other than TDSF and its Affiliates, Licensee and its Affiliates, and any Other Disney Store Operator and its Affiliates) that designs, develops and/or manufactures Other Licensee Merchandise (e.g., Mattel, Hasbro).

**"Other Disney Store Merchandise"** shall mean any consumer products and merchandise that (i) are developed by an Other Disney Store Operator pursuant to a Contract between such Other Disney Store Operator, on the one hand, and TDSF and/or any of its Affiliates, on the other hand, and (ii) bear, feature or incorporate one (1) or more of the Disney Properties.

**"Other Disney Store Operator"** shall mean any Person that operates one (1) or more retail stores under the *"Disney Store"* name in one (1) or more locations outside of the Territory (e.g., Europe, Japan, China, Hong Kong) pursuant to a Contract between such Person, on the one hand, and TDSF and/or any of its Affiliates, on the other hand.

**"Other Licensee Merchandise"** shall mean any consumer products and merchandise that (i) are developed by an Other Disney Licensee pursuant to a Contract between such Other Disney Licensee, on the one hand, and TDSF and/or any of its Affiliates, on the other hand, and (ii) bear, feature or incorporate one (1) or more of the Disney Properties.

**"Other Real Property"** shall mean any real property that is not a Leased Property, but was, is or will be used by Licensee relating to, or associated with, the Business (e.g., a Facility, a Distribution Center, a corporate headquarters or other office, or another location, store, facility or real property used in the Business), including, without limitation, fee simple ownership of real property, easements, servitudes, licenses or any other real or personal property interest affecting such real property.

**"Out of Store Materials"** shall have the meaning specified in Section 5.2.2(a).

**"Outlet Center"** shall mean a multi-tenant retail shopping destination that is known, identified, promoted or held out to the public as a common or unified complex, with the following elements and characteristics: (i) one hundred thousand (100,000) or more gross leaseable square feet of shopping space, (ii) substantially all tenants consisting of Outlet Stores, and (iii) a majority of tenants consisting of Outlet Stores that offer nationally recognizable, name-brand consumer products (e.g., the Outlet Store version of Gap, Polo Ralph Lauren, Coach, Carter's, The Children's Place, Samsonite, etc.). For purposes of clarification, "Outlet Centers" shall include outlet centers that are in a form and manner similar to those operated as of the Effective Date by Mills Corporation.

**"Outlet Facility"** shall mean a physical (not a "virtual" or online) Outlet Store located within an Outlet Center that is owned or leased by Licensee and operated by Licensee under the name *"Disney Store Outlet"* or such other name as shall be approved by each of TDSF and Licensee in its respective sole discretion, a material purpose of which is liquidating excess, obsolete or otherwise slow-moving inventories of Disney Merchandise from Store Facilities and/or the Internet Store.

**"Outlet Store"** shall mean a retail store that offers products to consumers with an emphasis on low prices, a material purpose of which is liquidating excess, obsolete or otherwise slow-moving inventory from other related retail activities (e.g., a "Gap" outlet would liquidate inventory from the "Gap" chain of specialty retail clothing stores).

**"Outstanding Licensee Securities"** shall mean the Licensee Securities constituting equity Securities outstanding as of the Effective Date.

**"Outstanding TDS Canada Securities"** shall mean the TDS Canada Securities constituting equity Securities outstanding as of the Effective Date.

**"Outstanding TDS USA Securities"** shall mean the TDS USA Securities constituting equity Securities outstanding as of the Effective Date.

**"Overhead Assets and Operations"** shall have the meaning specified in Section 15.1.1.

**"Parent Affiliate"** shall mean, with respect to any Person, an Affiliate of such Person who owns at least a majority of the outstanding voting equity Securities of such Person.

**"party"** shall have the meaning set forth in the preamble to this Agreement.

**"Party Designations"** shall have the meaning specified in Section 21.23.5(b).

**"Payment Service Products"** shall mean all versions of the following, regardless of the medium or technology used in the delivery thereof (e.g., whether via plastic cards or electronic, "smart" or chip-based, remote, on-line, internet or wireless versions, or other methods of delivery): (i) credit cards and charge cards; (ii) debit cards; (iii) automatic teller machine cards; (iv) electronic funds transfer point-of-sale cards; (v) stored value cards or prepaid cards, including reloadable cards such as payroll cards, incentive cards and gift cards (other than Disney Stored Value Cards); (vi) travelers checks and "TravelMoney" cards; (vii) corporate, purchasing, distribution and travel and entertainment cards; and (viii) transaction security services featuring payer and/or seller authentication.

**"Pension Fund"** shall mean an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA that is either (i) subject to the requirements of Section 403(a) of ERISA or (ii) described in Sections 3(32), 3(33) or 4(b)(4) of ERISA; provided, that, for purposes of this Agreement, any Pension Fund (a) that is sponsored, established, administered, controlled, managed or operated by a Person who would be a Disqualified Person but for subparagraph (6) of the definition of "Disqualified Person" or (b) the majority of the funds of which is contributed by a Person and/or the employees of a Person who would be a Disqualified Person but for subparagraph (6) of the definition of "Disqualified Person," shall be excluded from the definition of "Pension Fund."

**"Permitted Closings"** shall have the meaning specified in Section 9.3.1(b).

**"Permitted Openings"** shall have the meaning specified in Section 9.3.1(a).

**"Permitted Opening/Closing Notice"** shall have the meaning specified in Section 9.3.1(c).

**"Permitted Openings Measurement Year"** shall have the meaning specified in Section 9.3.1(a).

**"Permitted Transfer"** shall mean any of the following, provided, that each is conducted in accordance with all applicable Laws (including all applicable securities Laws) and subject in each case to compliance with Section 9.12.3, as applicable:

(i) the Transfer of Licensee Securities, Licensee Affiliate Securities, TCP Securities or TCP Affiliate Securities by any Person pursuant to a Public Offering;

(ii) the Transfer of Licensee Securities, Licensee Affiliate Securities, TCP Securities or TCP Affiliate Securities, in each case consisting of debt Securities only, by the issuer thereof (i.e., Licensee, the respective Licensee Affiliate, TCP or the respective TCP Affiliate, as applicable) only to "qualified institutional buyers" (as defined in Rule 144A) who are not Disqualified Persons, in each case pursuant to and in accordance with Rule 144A;

(iii) the Transfer of Licensee Securities, Licensee Affiliate Securities, TCP Securities or TCP Affiliate Securities pursuant to and in accordance with Rule 144, provided that, in the case of each individual Transfer or series of related Transfers pursuant to Rule 144 by any Dabah Stockholder that is conducted through a "brokers' transaction" (as defined in Rule 144) as opposed to through a "market maker" (as defined in Rule 144), with respect to each such individual Transfer or series of related Transfers, no one Person or one group of Persons shall acquire more that twenty-five percent (25%) of the aggregate amount of Securities being Transferred pursuant to such individual Transfer or series of related Transfers;

(iv) the grant or issuance of TCP Securities or, following a Public Offering thereof, any Licensee Securities, Licensee Affiliate Securities or TCP Affiliate Securities to employees or directors of the issuer thereof (i.e., Licensee, the respective Licensee Affiliate, TCP or the respective TCP Affiliate, as applicable) pursuant to and in compliance with the terms of any stock option, stock purchase or similar equity plan for the benefit only of employees and/or directors of the applicable issuer or its Affiliates, provided that this subparagraph (iv) specifically does not relate to or cover the resale of any such Securities by any such employee or director to another Person or group of Persons;

(v) the Transfer of TCP Securities or, following a Public Offering thereof, any Licensee Securities, Licensee Affiliate Securities or TCP Affiliate Securities by any Dabah Stockholder (a) to his or her spouse or former spouse or lineal or legally adopted descendants or ancestors (and their spouses), (b) to the trustee of a trust for the principal benefit of any one (1) or more of the foregoing Persons, (c) for other comparable estate planning purposes or (d) to any Charitable Organization, provided that in each such case the Transferee of such TCP Securities shall continue to be and be deemed to be a Dabah Stockholder for all purposes of this Agreement (provided that, so long as all Charitable Organizations in the aggregate have not received, in one (1) or more Transfers, more than five percent (5%) of any tranche of outstanding voting TCP Securities, then any Charitable Organization that receives, in the aggregate in one (1) or more Transfers, no more than one percent (1.0%) of any tranche of outstanding voting TCP Securities shall not be deemed a Dabah Stockholder);

(vi) the Transfer of Licensee Securities or Licensee Affiliate Securities by any Person to a Qualified Person so long as such Transfer is accompanied by a Guaranty Assumption (as and to the extent required by TDSF in its sole discretion) and, in the case of a Transfer involving Licensee Securities, a License Assumption (as and to the extent determined to be necessary or prudent and therefore required by TDSF in its business judgment);

(vii) the Transfer of TCP Securities or TCP Affiliate Securities by any Person to a Qualified Person; and

(viii) the Transfer of TCP Securities or TCP Affiliate Securities by any Person to a Disqualified Person, provided, that: (a) during any calendar year, the aggregate amount of TCP Securities or TCP Affiliate Securities Transferred to Disqualified

Persons by TCP, the Dabah Stockholders and the Affiliates of TCP, taken together, pursuant to this subparagraph (viii), shall not exceed one and one-half percent (1.5%) of any tranche of outstanding voting TCP Securities or outstanding voting TCP Affiliate Securities; (b) at no time shall any Disqualified Person who is the Largest TCP Stockholder or the Largest TCP Affiliate Stockholder own, beneficially or of record, more than nineteen percent (19%) of any tranche of outstanding voting TCP Securities or outstanding voting TCP Affiliate Securities; (c) at no time shall any Disqualified Person who is not the Largest TCP Stockholder or the Largest TCP Affiliate Stockholder own, beneficially or of record, more than twenty-five percent (25%) of any tranche of outstanding voting TCP Securities or outstanding voting TCP Affiliate Securities; and (d) at no time shall all Disqualified Persons, taken together in the aggregate, without regard to whether any such Disqualified Person is or is not the Largest TCP Stockholder or the Largest TCP Affiliate Stockholder, own, beneficially or of record, more than thirty-three percent (33%) of any tranche of outstanding voting TCP Securities or outstanding voting TCP Affiliate Securities. For purposes of calculating the percentages under the preceding subparagraphs (b), (c) and (d), the ownership of TCP Securities or TCP Affiliate Securities by a Disqualified Person shall be included in such calculation only to the extent it is known or, based upon diligent inquiry by Licensee and its Affiliates, should reasonably have been known to Licensee or its Affiliates, whether based on publicly available information (such as filings in accordance with Schedule 13D under the Securities Exchange Act), the stock ledgers and records of Licensee or its Affiliates, or other available sources of information. For purposes of calculating the percentages under the preceding subparagraph (a), Licensee shall be deemed to have knowledge of all such Transfers to Disqualified Persons and the qualification in the preceding sentence shall be inapplicable.

For purposes of clarification, a pledge of TCP Securities as security for a margin loan shall be deemed a Permitted Transfer hereunder so long as any sale of the pledged TCP Securities upon foreclosure (or comparable action) upon or in connection with such margin loan would constitute a Permitted Transfer pursuant to one (1) or more of the preceding subparagraphs (i) through (viii) of this definition and the terms of such margin loan are designed to ensure compliance with one (1) or more of such provisions.

**"Person"** shall mean any natural person or any corporation, partnership, limited partnership, limited liability company, trust or other form of legal entity.

**"Pre-Approved Merchandise Categories"** shall mean Hardlines, Softlines and Toys/Plush.

**"Pre-Exercise Notice"** shall have the meaning specified in Section 2.2.1.

**"Pre-Existing Percent LTM Sales"** shall have the meaning specified in Section 6.2.2(a).

**"Predecessor Disney Website"** shall mean the online retail store located on the World Wide Web at the TDS Internet Domains (or any replacements thereof adopted by TDSF or its Affiliates in anticipation of the Internet Start Date) operated by TDSF and its Affiliates prior to the Internet Start Date.

**"Premiums"** shall mean Disney Merchandise intended to be distributed to customers or the trade for free or for a nominal fee in connection with any marketing, advertising or promotional activities under this Agreement.

**"Primary Disney Retail Store"** shall mean any self-contained physical (not "virtual" or online) retail store(s) and/or free-standing kiosk(s) that (i) is either (a) owned or operated by TDSF and/or any of its Affiliates or (b) owned or leased by any unrelated third party and operated by such unrelated third party pursuant to and in accordance with a license to use Disney-Branded Properties granted by TDSF or its Affiliates, and (ii) either (x) is operated and held out to the public under a name that incorporates the word "Disney" or any Disney-Branded Property and/or (y) offers, in at least seventy-five percent (75%) of such store's or kiosk's Public Merchandising Space, SKUs of consumer products and merchandise that bear, feature or incorporate one (1) or more Disney-Branded Properties.

**"Prime Rate"** shall mean the base rate on corporate loans at large United States money center commercial banks as such rate is reported under "prime rate" in *The Wall Street Journal* from time to time.

**"Priority Designations"** shall have the meaning specified in Section 21.23.5(d).

**"Product Design Elements"** shall have the meaning specified in Section 11.1.

**"Product Safety Director"** shall mean an employee of TDSF or its Affiliates (of such rank or level as TDSF may determine in its sole discretion) designated by TDSF or its Affiliates, whose sole responsibility shall consist of overseeing and managing, on behalf of TDSF, the relationship between TDSF and Licensee with respect to product safety guidelines and procedures pertaining to Disney Merchandise as contemplated by this Agreement, including Section 5.1.4. The Product Safety Director may, at the election of TDSF, consist of more than one (1) employee of TDSF or its Affiliates. For purposes of clarification, the Product Safety Director shall not be an employee of Licensee or its Affiliates and shall not take directions or instructions from Licensee or its Affiliates but rather only from TDSF and its Affiliates, notwithstanding the fact that, so long as Licensee maintains a headquarters office in the vicinity of Burbank or Glendale, California, the Product Safety Director shall maintain his or her primary office at such headquarters office of Licensee (at the sole cost and expense of Licensee) in addition to the office that may be maintained by the Product Safety Director at the offices of TDSF or its Affiliates.

**"Product Safety Laboratory"** shall mean an internationally recognized product safety testing laboratory that (i) is selected in good faith by Licensee and approved in writing by TDSF (such approval to be granted or denied by TDSF in its business judgment), (ii) is a third party that is not related to or Affiliated with Licensee or its Affiliates, except to the extent contemplated by

Section 5.1.4(f), and (iii) has received a copy of the Disney Product Guidelines from Licensee and agreed to test the Disney Merchandise against and in compliance with the standards contained in the Disney Product Guidelines.

**"Product Trademarks"** shall have the meaning specified in Section 11.1.

**"Promotional Brief"** shall have the meaning specified in Section 5.2.1.

**"Property-Product Combination"** shall mean, with respect to a DTR License granted to a chain of Specialty Retail Stores by TDSF or its Affiliates, the combination of (i) a particular Character Property authorized to be used under such DTR License and (ii) a particular DTR Product Category in connection with which such particular Character Property is authorized to be used under such DTR License.

**"Proposed Lease Agreement Notice"** shall have the meaning specified in Section 9.7.1(e).

**"Public Merchandising Space"** shall mean, with respect to (i) any Primary Disney Retail Store or (ii) any specialty retail store that is owned, leased, licensed, controlled and/or operated by TCP or its Affiliates (other than Licensee Parent, Licensee, Canadian Parent and their respective Subsidiaries), the aggregate retail merchandising space (in square feet) that is open to the general public (i.e., excluding stock rooms, restrooms and other non-public or non-retail space).

**"Public Offering"** shall mean an underwritten public offering of any Licensee Securities, Licensee Affiliate Securities, TCP Securities or TCP Affiliate Securities pursuant to an effective registration statement under the Securities Act, provided, that such Public Offering shall comply with the following conditions: (i) in the case of a Public Offering of Licensee Securities or Licensee Affiliate Securities, (a) such Public Offering shall not be filed with the Securities and Exchange Commission or otherwise commenced at any time prior to the end of the second (2nd) Contract Year, and (b) such Public Offering shall generate aggregate gross proceeds, before deduction of selling commissions and expenses, of at least Twenty Million Dollars ($20,000,000), and (ii) such Public Offering shall be made to the general public and not to a select or targeted group of investors.

**"Publishing Properties"** shall mean children-oriented publications that are produced and/or distributed by TDSF or any of its Affiliates under the "Disney Adventures" and "Disney Magazine" label or any other label that incorporates the name "Disney" or any variation thereof, but specifically excluding any other publications that are produced and/or distributed by TDSF or any of its Affiliates, such as, by way of illustration and without limitation, publications produced and/or distributed under the Hyperion label.

**"Purchase Commencement Date"** shall have the meaning specified in Section 15.1.4.

**"Purchase Price"** shall mean, with respect to any Disney Merchandise, an amount equal to the retail price at which such Disney Merchandise is offered to the public on a particular date.

**"Purchase Process"** shall have the meaning specified in Section 15.1.1.

**"Qualified Person"** shall mean any Person who is not a Disqualified Person.

**"Qualifying Strip Center"** shall mean a quality multi-tenant retail shopping destination that is known, identified, promoted or held out to the public as a common or unified complex, with the following elements and characteristics: (i) one hundred thousand (100,000) or more gross leaseable square feet of retail shopping space, (ii) two (2) or more Specialty Retail Stores (in addition to any Store Facility), (iii) a full-priced retail image (as opposed to a discount image), except for periodic promotional and seasonal sales, and (iv) a layout or design that is generally oriented toward a public street or thoroughfare.

**"Quarterly Merchandise Plan"** shall have the meaning specified in Section 9.6.1.

**"Refurbishments"** shall have the meaning specified in Section 9.3.5(b).

**"Release Year"** shall have the meaning specified in Section 9.9.3.

**"Remainder Amount"** shall have the meaning specified in Section 15.2.3(a).

**"Renewal Term"** shall have the meaning specified in Section 2.2.

**"Representatives"** shall mean, with respect to any Person, the officers, directors, employees, managers, partners, agents, consultants, advisors (including legal advisors, financial advisors and accountants), contractors and subcontractors of such Person.

**"Reproductions"** shall have the meaning specified in Section 9.9.12.

**"Required Product"** shall have the meaning specified in Section 9.9.2.

**"Response Failure"** shall have the meaning specified in Section 5.1.1(b).

**"Response Failure Fee"** shall have the meaning specified in Section 5.1.1(b).

**"Restaurant"** shall have the meaning specified in Section 5.2.8(a).

**"Restricted Name"** shall mean solely the names "Disney Store," "Disney Boutique," "Disney Emporium," "Disney Market," "Disney Mart," "Disney Shop," "Disney Place" and "Disney Stop," and no other names.

**"Retail Facilities"** shall mean retail shopping mall, outlet center or strip mall facilities primarily focused on retail sales of consumer products.

**"Retail Month"** shall mean a month in a "retail" Fiscal Year consisting of a four (4) or five (5) week period, as applicable, beginning on a Sunday closest to the last day of a calendar month and ending on a Saturday and corresponding with the generally accepted retail calendar.

"**Revolving Loans**" shall have the meaning specified in Section 9.17.2(b).

**"Royalty Breach"** shall mean the failure by Licensee to make any payment required to be made by Licensee pursuant to Section 7.

**"Rule 144"** shall mean Rule 144 of the General Rules and Regulations promulgated under the Securities Act, as in effect from time to time.

**"Rule 144A"** shall mean Rule 144A of the General Rules and Regulations promulgated under the Securities Act, as in effect from time to time.

**"Schedules"** shall mean those certain schedules to this Agreement that have been separately delivered by TDSF to Licensee concurrently with the execution of this Agreement and with reference to this Agreement.

**"SEC"** shall mean the United States Securities and Exchange Commission or any successor.

**"Second Largest TCP Affiliate Stockholder"** shall mean, with respect to each Affiliate of TCP (other than Licensee, Licensee Parent, Canadian Parent and the Subsidiaries of Licensee, Licensee Parent and Canadian Parent), the Person or group of Persons whose beneficial ownership (within the meaning of Rule 13d-3 under the Securities Exchange Act) of voting TCP Affiliate Securities of such Affiliate of TCP entitles it to the second largest vote (after the Largest TCP Affiliate Stockholder) in the election of the board of directors (or comparable governing body) of such Affiliate of TCP among all holders of TCP Affiliate Securities of such Affiliate of TCP.

**"Second Largest TCP Stockholder"** shall mean the Person or group of Persons whose beneficial ownership (within the meaning of Rule 13d-3 under the Securities Exchange Act) of voting TCP Securities entitles it to the second largest vote (after the Largest TCP Stockholder) in the election of TCP's board of directors (or comparable governing body) among all holders of TCP Securities.

**"Secured Lender"** shall mean any lender under the Debt Facilities of Licensee and/or its Subsidiaries entered into in accordance with Section 9.17.2 that has taken a security interest in Licensee's and/or its Subsidiaries' inventory, accounts receivable and/or assets of the Business, including, without limitation, Wells Fargo Retail Finance, LLC, under the Original Debt Facility.

**"Securities"** shall mean any and all debt and equity securities and other ownership interests in whatever form, including, without limitation, common stock or shares, preferred stock or shares or other capital stock, membership, partnership or participation interests or units, and notes, bonds, debentures or other similar debt instruments, including, without limitation, any securities, warrants, options or rights convertible into or exercisable or exchangeable for any of the foregoing.

**"Securities Act"** shall mean the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute.

**"Securities Exchange Act"** shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, or any similar successor statute.

**"Securities Filings"** shall have the meaning set forth in Section 9.11.6.

**"Select Street Location"** shall mean any quality shopping street located within a major metropolitan area or notable resort district (e.g., State Street in Chicago, Illinois; 86th> Street in Manhattan, New York; Hollywood Boulevard in Los Angeles, California) that includes three (3) or more Specialty Retail Stores (in addition to any Store Facility) located on the same street as, and within one-quarter (¼) mile of, any Store Facility.

**"Shopping Mall"** shall mean a multi-tenant retail shopping destination that is known, identified, promoted or held out to the public as a common or unified complex, with the following elements and characteristics: (i) five hundred thousand (500,000) or more gross leaseable square feet of retail shopping space, (ii) one (1) or more Department Stores, (iii) one (1) or more Specialty Retail Stores (in addition to any Store Facility) that occupy, in the aggregate, at least one hundred fifty thousand (150,000) gross leaseable square feet, (iv) numerous other retail stores offering a wide variety of products and services, such as apparel, shoes, jewelry, toys, sporting goods, books and music, each operated by a separate merchant tenant, (v) at least one (1) entertainment venue, such as a restaurant, food court or movie theater, (vi) a full-priced retail image (as opposed to a discount image), except for periodic promotional and seasonal sales, and (vii) a self-contained layout with an enclosed structure or a format organized around an interior courtyard or private pedestrian street system, in either case such that the shopping experience is not open to public

streets or thoroughfares. Without limiting the foregoing and for purposes of clarification, "Shopping Mall" shall not include any "strip mall" (i.e., a collection of retail outlets generally oriented toward a public street or thoroughfare), any Outlet Center, life-style center or any shopping destination that is organized around public streets (e.g., "Main Street" in any downtown location).

**"Short-Term Lease"** shall mean a Lease Agreement providing for the operation of a Facility under a month-to-month tenancy or for a full term or short-term renewal of two (2) years or less.

**"Significant Subsidiary"** shall have the meaning specified in subparagraph (w) of Section 210.1-02 of Regulation S-X promulgated by the SEC, as amended, modified or replaced from time to time.

**"Silver Pass Holders"** shall have the meaning specified in Section 20.3.

**"SK Entities"** shall mean The SK Equity Fund, L.P., the SK Investment Fund, L.P. and each of their respective Affiliates.

**"SKU"** shall mean a stock keeping unit.

**"Softlines"** shall mean those categories of softline consumer products set forth on Schedule 1(f), as such Schedule 1(f) may be amended from time to time with the approval of TDSF and Licensee in their respective sole discretion.

**"Specialty Retail Store"** shall mean a retail store that is known, identified, promoted or held out to the public as being part of a chain of retail stores with the following elements and characteristics: (i) all stores in the chain operate under the same nationally or regionally recognizable brand name (regardless of whether such stores are operated by one owner or by different franchisees), (ii) the chain consists of more than eighty (80) retail stores (or, for purposes of the limitations on DTR Licenses granted by TDSF and/or its Affiliates to one (1) or more chains of Specialty Retail Stores set forth in Section 6.2.2, the chain consists of more than sixty (60) retail stores), (iii) the average size of stores within the chain is less than twenty thousand (20,000) gross leaseable square feet, (iv) all stores within the chain primarily offer Softlines and/or Hardlines with a specific emphasis on one category or type of consumer product (e.g., apparel, cookware, electronics, music, etc.) as opposed to a wide variety of consumer products organized by department or otherwise, such as in a Department Store, and (v) the stores within the chain generally offer merchandise on a full-retail pricing model rather than a discount or warehouse pricing model, except for periodic promotional and seasonal sales. As of the Effective Date, examples of "Specialty Retail Stores" shall be deemed to include Gap, Banana Republic, Old Navy, Baby Gap, The Children's Place, Gymboree, Spencer Gifts, The Limited, Express, Victoria's Secret, Bath and Body Works, Williams-Sonoma, Abercrombie & Fitch, KB Toys, Hallmark, Dress Barn, Fashion Bug, Stride-Rite, Radio Shack and Sam Goody.

**"Store Facility"** shall mean a physical (not a "virtual" or online) specialty retail store that (i) is located in a Shopping Mall, a Select Street Location or a Qualifying Strip Center, (ii) operates on a stand-alone basis only (i.e., as opposed to a Store-Within-a-Store Format), (iii) offers a variety of Disney Merchandise in a general emporium format, (iv) does not offer for sale, feature or sell any goods, products, merchandise, services or other items other than Disney Merchandise, and (v) is owned or leased by Licensee and operated by Licensee under the *"Disney Store"* name in a form, manner and style that is substantially similar to the form, manner and style in which such stores were operated by TDSF or its Affiliates under the *"Disney Store"* name immediately prior to the Effective Date (with any modifications to such form, manner and style as may be approved by each of TDSF and Licensee in its respective sole discretion following the Effective Date or as are otherwise permitted by, and are in accordance with, the provisions of this Agreement).

**"Store-Within-a-Store Format"** shall mean a retail location that is designated or identified as a self-contained shop, section, department or division within a larger store, such as a "Disney" shop, section, department or division within a Wal-Mart, Target, Sears or JC Penney store.

**"Stored Value Card Fee"** shall have the meaning specified in Section 9.9.11(b).

**"Stored Value Card Fee Rate"** shall have the meaning specified in Section 9.9.11(b).

**"Strategic Alliances"** shall have the meaning specified in Section 9.8.1.

**"Strike Notice"** shall have the meaning specified in Section 21.23.5(c).

**"Stub Period"** shall have the meaning specified in Section 2.1.

**"Subsequent Closing"** shall have the meaning specified in the Acquisition Agreement.

**"Subsequent Closing Date"** shall have the meaning specified in the Acquisition Agreement.

**"Subsequent Closing Period"** shall have the meaning specified in the Acquisition Agreement.

**"Subsidiaries"** shall mean, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the directors, managers or trustees of such corporation, partnership, limited liability company or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

**"Tax"** or **"Taxes"** shall mean (i) any and all federal, state, provincial, local, municipal and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities of any kind, including taxes or other charges based upon or measured by gross receipts, income, profits, sales, capital, use and occupation, and value added, goods and services, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, personal property, excise, duty, customs and real estate taxes, and, in addition to the foregoing, with respect to TDS Canada, Canada Pension Plan and provincial pension plan contributions, employment and unemployment insurance contributions, worker's compensation and deductions at source, together, in each case, with all interest, penalties and additions imposed with respect to such amounts; (ii) any liability for the payment of any amounts of the type described in subparagraph (i) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iii) any liability for the payments of the amounts of the types described in subparagraph (i) or (ii) as a result of being a transferee of, or a successor in interest to, any Person or as a result of an express or implied obligation to indemnify any Person (other than any indemnification obligation arising under this Agreement).

**"Tax Return"** shall mean a report, return or other information or form required to be supplied to a Governmental Entity with respect to Taxes, including, without limitation, where permitted or required, combined or consolidated returns for any group of entities that includes any Affiliate.

**"TCP"** shall mean The Children's Place Retail Stores, Inc., a Delaware corporation and the parent of Licensee Parent and the indirect parent of Licensee and Canadian Parent. Following the Effective Date, any Affiliate of TCP who becomes an Obligor or an Affiliate Guarantor (each as defined in the TCP Guaranty and Commitment) under the TCP Guaranty and Commitment pursuant to the definition of "TCP" therein or Section 4(m) thereof, respectively, shall be subject to the obligations, restrictions and provisions pertaining to TCP hereunder.

**"TCP Affiliate Securities"** shall mean Securities of any Subsidiary of TCP other than Licensee, Licensee Parent, Canadian Parent and the Subsidiaries of Licensee, Licensee Parent and Canadian Parent, in whatever form.

**"TCP Characters"** shall have the meaning specified in Section 6.3.

**"TCP Entities"** shall have the meaning specified in Section 9.13.1.

**"TCP Guaranty and Commitment"** shall mean the Guaranty and Commitment of even date herewith entered into by TCP and Licensee Parent in favor of Licensee and TDSF, pursuant to which TCP and Licensee Parent have jointly and severally guaranteed the obligations of Licensee under this Agreement and all other Contracts from time to time executed and/or delivered in connection herewith (including, without limitation, any applicable agreements between TDSF, Licensee and/or their respective Affiliates with respect to the provision of certain administrative, distribution and/or information technology services on a transitional basis and/or the operation of the Disney Retained Stores) and committed to invest certain funds in Licensee to support such obligations and Licensee's operation of the Facilities and the Internet Store hereunder.

**"TCP Intercompany Services Agreement"** shall mean the Intercompany Services Agreement of even date herewith among TCP and/or its Affiliates, on the one hand, and Licensee and/or its Subsidiaries, on the other hand, in substantially the form set forth in Schedule 1(g), pertaining to the provision by TCP and/or its Affiliates (other than Licensee and its Subsidiaries) of certain management, administrative, support and other services to Licensee and its Subsidiaries in connection with Licensee's operation of the Business and the allocation of costs to Licensee and its Subsidiaries in connection therewith.

**"TCP Securities"** shall mean Securities of TCP in whatever form.

**"TCP Tax Sharing Agreement"** shall mean an intercompany agreement among TCP, Licensee and their respective Subsidiaries pertaining to the allocation of responsibility for tax liability among such parties, which agreement shall contain terms and conditions that are customary for agreements of such nature. Such agreement, together with any amendments, modifications, waivers, renewals, replacements or other changes thereto or thereunder, shall be subject to the approval of TDSF in its business judgment.

**"TDS Canada"** shall mean The Disney Store (Canada) Ltd., a corporation incorporated under the laws of the Province of Ontario, until (i) the Canada Reincorporation as contemplated by Section 9.12.1(a)(III), whereupon TDS Canada shall refer to Hoop Canada, Inc., a corporation incorporated under the laws of the Province of New Brunswick, and (ii) the execution and delivery of the Canadian Joinder as contemplated by Section 9.12.1(a)(II), whereupon TDS Canada shall refer individually and collectively to Hoop Canada, Inc. and New Canadian Limited Partnership.

**"TDS Canada Securities"** shall mean Securities of TDS Canada in whatever form.

**"TDS Internet Domains"** shall mean, collectively, the Internet domain name www.disneystore.com together with any substantially similar Internet domain names that use the words "Disney" and "store" in combination and that are owned and controlled by TDSF or its Affiliates (e.g., www.disneystores.com, www.thedisneystore.com).

**"TDS USA"** shall have the meaning specified in the preamble to this Agreement.

**"TDS USA Merger"** shall have the meaning specified in Section 9.12.1(a)(I).

**"TDS USA Securities"** shall mean Securities of TDS USA in whatever form.

**"TDSF"** shall have the meaning specified in the preamble to this Agreement.

**"TDSF Advisors"** shall have the meaning specified in Section 8.1.

**"TDSF Flagship Stores"** shall have the meaning specified in Section 6.1.1.

**"TDSF Self-Help Cure"** shall have the meaning specified in Section 9.10.2.

**"TDSF Self-Help Fund"** shall have the meaning specified in Section 9.10.3(a).

**"TDSF Self-Help Fund Amount"** shall have the meaning specified in Section 9.10.3(c).

**"TDSF/Affiliate Store"** shall have the meaning specified in Section 9.9.5.

**"Television Properties"** shall mean all children-oriented television programs (whether made for broadcast television, cable television or any other form of television programming) that feature in their title the name "Disney" or any variation thereof, such as, by way of illustration and not limitation, "Wonderful World of Disney" and "Disney's Kim Possible", which programs are produced and/or distributed by TDSF or any of its Affiliates, but specifically excluding any other television programs that are produced and/or distributed by TDSF or any of its Affiliates, such as, by way of illustration and without limitation, television programs such as "The Bachelor", "8 Simple Rules for Dating My Teenage Daughter" and other television programs made for broadcast on the ABC Television Network or any television programs produced and/or distributed on the Disney Channel that do not feature in their title the name "Disney."

**"Template"** shall have the meaning specified in Section 5.2.1.

**"Temporary Liquidation Store"** shall mean a retail store, a material purpose of which is liquidating excess, obsolete or otherwise slow-moving inventory from the DDM Business and/or any Theme Parks, hotels, motels, condominiums, Disney Vacation clubs or other time-share style accommodations or comparable lodging establishments owned, leased, licensed, controlled and/or operated by or on behalf of TDSF and/or any of its Affiliates, that is operated on a periodic and temporary basis (i.e., for a period not exceeding one hundred twenty-five (125) days at any particular location during any calendar year).

**"Term"** shall mean, collectively, the Initial Term and any and all Renewal Terms, as applicable.

**"Term Loans"** shall have the meaning specified in Section 9.17.2(b).

**"Territory"** shall have the meaning specified in Section 3.1.

**"Theatrical Properties"** shall mean children-oriented theatrical stage plays that are produced and/or operated by TDSF or any of its Affiliates and that either are derived directly from a Motion Picture Property or Television Property or bear in their title the name "Disney" or any variation thereof, such as, by way of illustration and not limitation, "Disney's The Lion King" and "Disney's Beauty and the Beast" theatrical stage plays, but specifically excluding any other theatrical stage plays that are produced and/or distributed by TDSF or any of its Affiliates.

**"Theme Park"** shall mean either an individual facility or a group, district or other assemblage of facilities that is known, identified, promoted or held out to the public as a common or unified complex, in either case offering amusement-style attractions and/or rides (e.g., roller coasters, "Space Mountain," "It's a Small World," or the "Jaws" attraction at Universal Studios Theme Park) and/or other substantially similar forms of entertainment, regardless of whether a fee is charged to gain entry or admission thereto; provided, that "Theme Park" shall not include (i) any local, county or state fairs, sporting arenas or sporting events or museums or (ii) any facilities that offer amusement-style attractions and/or rides but with respect to which the offering of such amusement-style attractions and/or rides does not comprise more than, in the case of Retail Facilities, fifteen percent (15%), and in the case of all other facilities, five percent (5%), of the total square footage of such facilities that is open to the general public (e.g., a gambling casino, such as the New York, New York hotel and casino in Las Vegas, that offers amusement-style rides or games in one portion of the lobby of the casino), provided that the carveouts described in this subparagraph (ii) shall not apply to any facility that is adjacent to, contained within, or held out to the public as being a part of, a facility that is a "Theme Park" within the terms of this definition. By way of example, and for illustration purposes only, the following venues (and all components thereof) are Theme Parks for the purposes of this definition: MAGIC KINGDOM® Park, DISNEYLAND® Resort, WALT DISNEY WORLD® Resort, DISNEYLAND Resort PARIS, Cedar Point, Six Flags, LEGOland, Busch Gardens, Universal® Studios and Sea World®.

**"Theme Park Admission Passes"** shall have the meaning specified in Section 9.9.1.

**"Third Party Offer"** shall have the meaning specified in Section 15.2.2(d).

**"Third Party Purchaser"** shall have the meaning specified in Section 15.1.1.

**"Toys/Plush"** shall mean those categories of toy and plush toy products set forth on Schedule 1(h), as such Schedule 1(h) may be amended from time to time with the approval of TDSF and Licensee in their respective sole discretion.

**"Trademarks"** shall mean all names, trademarks, service marks, logos, brands and other comparable proprietary designations, including all registrations thereof and applications for registrations thereof anywhere in the world, and all goodwill associated therewith.

**"Transfer"** shall mean any issuance, sale, transfer, assignment, subletting, hypothecation, pledge as security or collateral, Encumbrance or other disposition, in whole or in part, whether voluntarily or involuntarily, whether by gift, bequest or otherwise. In the case of a hypothecation, pledge or Encumbrance, the Transfer shall be deemed to occur both at the time of the initial pledge and at any pledgee's sale, any sale by any secured creditor, or any retention by any secured creditor of the pledge assets in complete or partial satisfaction of the indebtedness for which such assets are security.

**"TWDC"** shall mean The Walt Disney Company, a Delaware corporation and an Affiliate of TDSF.

**"Uncured"** shall mean that a Cure has not occurred in the manner or in the time periods contemplated by the definition of "Cure" set forth in this Agreement.

**"URL"** shall mean uniform resource locator.

**"ValueLink Agreement"** shall mean the Enterprise Stored Value Card Agreement, dated as of September 9, 2004, by and between Disney Gift Card Services, Inc., a Virginia corporation, and ValueLink, LLC, a Delaware limited liability company.

**"ValueLink Participation Agreement"** shall mean a participation agreement, as contemplated by the ValueLink Agreement, regarding participation in the gift card program established pursuant to the ValueLink Agreement by Persons who are not Affiliates of Disney Gift Card Services, Inc.

**"Visa"** shall mean, collectively, Visa U.S.A. Inc., a non-stock membership corporation organized under the laws of the State of Delaware, and Visa International Service Association, a non-stock membership corporation organized under the laws of the State of Delaware.

**"Visa Agreement"** shall mean the Master Promotional and Sponsorship Agreement, effective as of April 30, 2002, as amended, by and between Visa and Disney Worldwide Services, Inc., a Florida corporation and an Affiliate of TDSF.

**"Visa Payment Service Products"** shall mean Payment Service Products operated, managed and controlled by Visa and/or its Affiliates.

**"Walled Store-Within-a-Store"** shall mean a retail location that has a Store-Within-a-Store Format and that is demarcated by walls of at least six (6) feet in height on at least three (3) sides of the retail location.

**"WALT DISNEY WORLD Resort"** shall mean the entertainment, recreation and lodging complex located in Orange County and Osceola County, Florida, known as the WALT DISNEY WORLD® Resort, one of the principal features of which is the operation of four (4) separately gated theme and amusement parks known as MAGIC KINGDOM® Park, EPCOT®, Disney-MGM Studios and DISNEY'S ANIMAL KINGDOM® Theme Park.

**"Wind Down Procedures"** shall have the meaning specified in Section 9.3.1(c).

**"Withdrawal Date"** shall have the meaning specified in Section 4.9.

**"Withdrawal Determination"** shall have the meaning specified in Section 4.9.

**"Working Capital"** shall mean, at any date, the sum of all current assets reflected on a consolidated balance sheet of Licensee, Licensee Parent, Canadian Parent and their respective Subsidiaries prepared in accordance with GAAP, minus the sum of all current liabilities reflected on such consolidated balance sheet.

2. TERM OF AGREEMENT.

2.1 Initial Term. The initial term of this Agreement (the **"Initial Term"**) shall commence effective as of the Effective Date and, unless earlier terminated or extended as herein provided, shall terminate on the date that is the last day of the sixtieth ($60^{th}$) Fiscal Quarter of Licensee measured from the later to occur of either: (i) January 31, 2005, or (ii) the first day after the end of the Fiscal Quarter of TCP in which the Effective Date occurs (such date in subparagraph (i) or (ii), the **"Contract Year Start Date"**). For purposes of this Agreement, the period (if any) commencing on the Effective Date and ending on the day prior to the Contract Year Start Date is referred to herein as the **"Stub Period"** and each period of four Fiscal Quarters of Licensee commencing on the Contract Year Start Date or on any anniversary of the Contract Year Start Date during the Term is referred to herein as a **"Contract Year."** Notwithstanding the foregoing, the Term as it pertains to Licensee's rights with respect to the Internet Store shall be subject to Section 4.3.6.

2.2 Renewal Terms. The Initial Term may be extended for one (1) or more additional terms (each, a **"Renewal Term"**), subject to and in accordance with the following terms and conditions:

2.2.1 Conditional Renewal Terms. Subject to Licensee's satisfaction of the conditions set forth below in this Section 2.2.1, Licensee shall be entitled, in its sole discretion, to exercise up to three (3) Renewal Terms of ten (10) Contract Years each (for a total of thirty (30) additional Contract Years beyond the Initial Term if all such Renewal Terms are exercised by Licensee). In order to exercise any such Renewal Term, Licensee shall provide TDSF with written notice stating that Licensee is considering exercising such Renewal Term (the **"Pre-Exercise Notice"**) at any time during the first three (3) months of the eleventh ($11^{th}$) Contract Year (in the case of the first such Renewal Term) or, if applicable (assuming the first Renewal Term became effective in accordance with the terms of this Section 2.2.1), during the first three (3) Retail Months of the twenty-first ($21^{st}$) Contract Year (in

the case of the second Renewal Term, if applicable) or, if applicable (assuming the first and second Renewal Terms became effective in accordance with the terms of this Section 2.2.1), during the first three (3) Retail Months of the thirty-first (31st) Contract Year (in the case of the third Renewal Term, if applicable). Within three (3) Retail Months following such written notice from Licensee, TDSF shall provide written notice to Licensee indicating whether or not the conditions to the effectiveness of the applicable Renewal Term set forth below in this Section 2.2.1 have been satisfied. If such conditions have been satisfied, then the applicable Renewal Term shall be deemed effective, and the Term of this Agreement shall be deemed to have been extended by such Renewal Term, upon written notice from Licensee stating that Licensee desires to exercise such Renewal Term (the **"Exercise Notice"**), which Exercise Notice must be given by Licensee on or prior to the last day of the eleventh (11th) Contract Year (in the case of the first such Renewal Term) or, if applicable (assuming the first Renewal Term became effective in accordance with the terms of this Section 2.2.1), on or prior to the last day of the twenty-first (21st) Contract Year (in the case of the second Renewal Term, if applicable) or, if applicable (assuming the first and second Renewal Terms became effective in accordance with the terms of this Section 2.2.1), on or prior to the last day of the thirty-first (31st) Contract Year (in the case of the third Renewal Term, if applicable). If such conditions have not been satisfied, such Renewal Term shall be deemed ineffective for all purposes hereunder. Notwithstanding anything to the contrary contained herein, no Renewal Term contemplated by this Section 2.2.1 may be exercised by Licensee, and the Initial Term shall not be extended by any such Renewal Term, unless each of the following conditions shall have been satisfied, as determined by TDSF in its reasonable discretion:

(a) During, in the case of the first such Renewal Term, the Stub Period and the first (1st) through the tenth (10th) Contract Years of the Term, inclusive, or, in the case of the second such Renewal Term, if applicable, the eleventh (11th) through the twentieth (20th) Contract Years of the Term, inclusive, or, in the case of the third such Renewal Term, if applicable, the twenty-first (21st) through the thirtieth (30th) Contract Years of the Term, inclusive (each, a "**Measurement Period**"), Net Retail Sales shall have grown at an average annual compound rate equal to the increase, if any, in the CPI during each Contract Year of the Measurement Period calculated in accordance with the CPI Adjustment Methodology, with the first (1st) Contract Year to be treated as the base Contract Year for the first Measurement Period and, if applicable, the tenth (10th) Contract Year to be treated as the base Contract Year for the second Measurement Period and, if applicable, the twentieth (20th) Contract Year to be treated as the base Contract Year for the third Measurement Period;

(b) During the applicable Measurement Period, Licensee shall not have committed (i) any Uncured Royalty Breach, (ii) such number of Cured or Uncured Royalty Breaches as would permit TDSF to terminate this Agreement pursuant to subparagraph (ii) or (iii) of Section 13.1, (iii) any Uncured Licensee Infringing Use, (iv) more than four (4) Cured Licensee Infringing Uses, (v) more than two (2) Uncured Material Breaches (other than Royalty Breaches), or (vi) more than six (6) Cured Material Breaches (other than Royalty Breaches);

(c) During the applicable Measurement Period, neither TCP nor Licensee Parent shall have breached any material term, covenant or condition that is binding upon TCP or Licensee Parent under the TCP Guaranty and Commitment and failed to cure such breach within ten (10) Business Days following written notice of such breach from TDSF, Licensee or any of their respective Affiliates;

(d) As of the first day of the eleventh (11th) Contract Year, in the case of the first such Renewal Term, or, in the case of the second such Renewal Term, if applicable, as of the first day of the twenty-first (21st) Contract Year, or, in the case of the third such Renewal Term, if applicable, as of the first day of the thirty-first (31st) Contract Year, there shall not be (i) any Uncured Material Breach by Licensee (except as otherwise permitted by the preceding subparagraph (b)(v)) or any Uncured Licensee Infringing Use (and, for purposes of clarification, the condition in this subparagraph (i) shall not be deemed to have failed until the expiration of the applicable Cure period with respect to Licensee's Material Breach or the Licensee Infringing Use), nor (ii) any breach by TCP and/or Licensee Parent of any material term, covenant or condition that is binding upon TCP, Licensee Parent or their Affiliates under the TCP Guaranty and Commitment or any breach by TCP and/or Licensee Parent of any material representation or warranty of TCP or Licensee Parent made under the TCP Guaranty and Commitment, in each case which breach is not cured by TCP or Licensee Parent within ten (10) Business Days following written notice of such breach from TDSF, Licensee or any of their respective Affiliates (and, for purposes of clarification, the condition in this subparagraph (ii) shall not be deemed to have failed until the expiration of such ten (10) Business Day period);

(e) As of the last day of each of the last two (2) Fiscal Years of Licensee completed during the applicable Measurement Period, Licensee shall have been in compliance with the financial covenant set forth in Schedule 1(a) (the "**Financial Covenant**"); and

(f) Prior to or concurrently with the delivery of Licensee's Pre-Exercise Notice, TCP and Licensee Parent shall have delivered a written statement to TDSF, in form and substance reasonably satisfactory to TDSF, confirming that, upon the effectiveness of the applicable Renewal Term, (i) the TCP Guaranty and Commitment shall be deemed to have been renewed for such Renewal Term, (ii) all of the provisions of the TCP Guaranty and Commitment (including, without limitation, the remaining capital commitment under Section 2 thereof) shall continue in full force and effect during such Renewal Term and (iii) notwithstanding any payments made by TCP and/or Licensee Parent during the Initial Term or any prior Renewal Term pursuant to the guaranty under Section 3 of the TCP Guaranty and Commitment, such guaranty shall be equal to Twenty-Five Million Dollars ($25,000,000) for such Renewal Term, whether or not any payment had previously been made thereunder.

2.2.2 Negotiated Renewal Terms. During a six (6) month period of time (or such longer period of time as the parties may consent to in writing in their respective sole discretion) that shall begin (a) twenty (20) Business Days following the determination that a Renewal Term will not become effective pursuant to Section 2.2.1, whether due to Licensee’s failure to deliver the Pre-Exercise Notice or the Exercise Notice within the specified time, Licensee’s notice that it will not exercise such rights, or

TDSF's determination that the conditions required to exercise such Renewal Term have not been satisfied, or (b) if all Renewal Terms under Section 2.2.1 have been previously exercised, on the date that is four (4) years prior to the expiration date of the Term, TDSF and Licensee shall enter into good faith negotiations regarding the terms and conditions upon which they may be willing to enter into a Renewal Term of such duration as to which the parties may agree. Each of TDSF and Licensee shall be entitled to decide whether to enter into any such Renewal Term in its sole discretion and may terminate such discussions following such six (6) month period without recourse or remedy by the other party and without any abatement or reduction of any payments or other obligations hereunder. Any agreement reached under this Section 2.2.2 shall be memorialized in a written agreement or amendment to this Agreement. Notwithstanding the foregoing, TDSF shall not be required to conduct the negotiations contemplated by this Section 2.2.2 or, if already commenced, shall be entitled to terminate such negotiations in the event that, at any time prior to or during such six (6) month negotiating period, TCP or Licensee declines to enter into such good faith negotiations (or otherwise withdraws from such negotiations) or, during such six (6) month negotiating period or the twelve (12) month period immediately preceding such negotiating period, (X) Licensee shall have committed (i) any Uncured Royalty Breach, (ii) any Uncured Licensee Infringing Use, (iii) more than two (2) Cured Licensee Infringing Uses, (iv) more than two (2) Uncured Material Breaches (other than a Royalty Breach), or (v) more than three (3) Cured Material Breaches (other than a Royalty Breach), or (Y) either of TCP or Licensee Parent shall have breached any material term, covenant or condition that is binding upon TCP or Licensee Parent under the TCP Guaranty and Commitment and shall have failed to cure such breach within ten (10) Business Days following written notice of such breach from TDSF, Licensee or any of their respective Affiliates.

3. TERRITORY.

3.1 Definition of Territory. The territory covered by this Agreement and in which Licensee may exercise the rights granted to it hereunder shall consist of and be limited solely to (i) the United States of America and its territories and possessions, including Puerto Rico but excluding the Commonwealth of Northern Mariana Islands and Palau, and (ii) Canada (collectively, the **"Territory"**). For purposes of clarification and without limiting the foregoing, Licensee acknowledges and agrees that other third parties currently operate specialty retail chains under the *"Disney Store"* name offering consumer products featuring one (1) or more Disney Properties outside of the Territory (e.g., Europe, Japan, China, Hong Kong) and, in the future, TDSF, its Affiliates and/or third parties may continue to do so outside of the Territory.

3.2 Rights of Negotiation Regarding Central America, South America and China. During the Term, upon Licensee's written request to TDSF, TDSF shall negotiate with Licensee in good faith, but *not* on an exclusive basis, for a period of up to twenty (20) Business Days following Licensee's written request, regarding the terms and conditions upon which, and the separate consideration for which, TDSF would engage Licensee to be the operator of *"Disney Stores"* comparable to the Facilities operated hereunder within Central America (including Mexico), South America and/or China (including Hong Kong but excluding the Hong Kong airport). Any such written request by Licensee shall include a reasonably detailed preliminary business plan with respect to such operations proposed to be conducted by Licensee in such region(s). Each of TDSF and Licensee shall be entitled to decide whether to enter into any such agreement or arrangement in its sole discretion and may terminate such discussions at the end of such twenty (20) Business Day period (or earlier if, during such twenty (20) Business Day period, TDSF and/or its Affiliates enter into an agreement with another Person to be the operator of such *"Disney Store"* facilities in such region(s)), in each case without recourse or remedy by the other party and without any abatement or reduction of any payments or other obligations hereunder. Notwithstanding anything to the contrary contained herein, (i) for purposes of clarification, Licensee acknowledges and agrees that, prior to the Effective Date, TDSF and/or its Affiliates have previously commenced negotiations, and intend to continue such negotiations, with one (1) or more third Persons regarding the proposed operation of *"Disney Store"* facilities in such regions (all such negotiations in process as of the Effective Date, the **"Current Negotiations"**) and, accordingly, prior to the exercise by Licensee of any of its rights pursuant to this Section 3.2, TDSF and/or its Affiliates may enter into or may have entered into an agreement with another Person, which may consist of a Person who competes directly or indirectly with Licensee or its Affiliates, to be the operator of such *"Disney Store"* facilities in such region(s) or may elect to operate such *"Disney Store"* facilities itself, in which event TDSF would be entitled either not to commence negotiations with Licensee hereunder or to terminate any such negotiations that had commenced with respect to such region(s), in each case without recourse or remedy by Licensee and without any abatement or reduction of any payments or other obligations of Licensee hereunder, (ii) in the event that, during the Term, all of the Current Negotiations regarding the proposed operation of *"Disney Store"* facilities in Central America (including Mexico) or South America terminate, TDSF shall provide written notice to Licensee of such termination and, upon Licensee's written request made within five (5) Business Days following TDSF's written notice, TDSF shall negotiate with Licensee in good faith and exclusively for a period of twenty (20) Business Days following Licensee's written request (such period not to be shortened based upon the circumstances described in the preceding subparagraph (i) of this Section 3.2.), regarding the terms and conditions upon which, and the separate consideration for which, TDSF would engage Licensee to be the operator of such *"Disney Store"* facilities in Central America (including Mexico) or South America, as applicable, and (iii) in the event that, during the Term, all of the Current Negotiations regarding the proposed operation of "Disney Store" facilities in China (including Hong Kong) terminate, TDSF shall provide written notice to Licensee of such termination and, upon Licensee's written request made within five (5) Business Days following TDSF's written notice, TDSF shall negotiate with Licensee in good faith, but not on an exclusive basis, for a period of twenty (20) Business Days following Licensee's written request (such period not to be shortened based upon the circumstances described in the preceding subparagraph (i) of this Section 3.2.), regarding the terms and conditions upon which, and the separate consideration for which, TDSF would engage Licensee to be the operator of such *"Disney Store"* facilities in China (including Hong Kong but excluding the Hong Kong airport), provided, that, in the case of the preceding subparagraphs (ii) and (iii), (a) each of TDSF and Licensee shall be entitled to decide whether to enter into any such agreement or arrangement in its sole discretion and may terminate such discussions at the end of such twenty (20) Business Day period, in each case without recourse or remedy by the other party and without any abatement or reduction of any payments or other obligations hereunder, and (b) in the event that Licensee fails to respond to TDSF within five (5) Business Days following TDSF's written notice or the parties fail to enter into a definitive written agreement within such twenty (20) Business Day period, then TDSF and/or any of its Affiliates shall

be entitled to operate, and/or negotiate and enter into any agreement with any other Person, including any Person who competes directly or indirectly with Licensee or its Affiliates, to be the operator of, such *"Disney Store"* facilities in any such region(s), without recourse or remedy by Licensee and without any abatement or reduction of any payments or other obligations of Licensee hereunder. Any agreement between TDSF and Licensee reached under this Section 3.2 shall be memorialized in a separate written agreement.

4. LICENSE.

4.1 Grant of License. Subject to the terms and conditions of this Agreement (including, without limitation, the approval provisions set forth in Section 5), TDSF grants to Licensee, and Licensee hereby accepts from TDSF, during the Term and within the Territory, the non-exclusive, non-sublicenseable (except to the extent of any sublicense granted pursuant to a Manufacturer's Agreement or Manufacturer's MOU), limited right to use, reproduce and display the Disney Properties only on or in connection with: (i) tenant improvements and furniture, fixtures and equipment that are embodied or used in the Facilities in connection with the Business, including, without limitation, shelving, appliances, lighting, packages, shopping bags, gift wrap, staff costumes and other physical attributes of the Facilities (collectively, the **"FF&E Materials"**); (ii) Disney Merchandise, including packaging and containers for such Disney Merchandise, that are developed, manufactured, distributed, offered for sale and sold solely within the Facilities and the Internet Store authorized hereunder and operated in accordance with the terms hereof (or as otherwise permitted by Section 6.3(i)(b) and 6.3(i)(c)); and (iii) marketing, advertising and promotional materials, displays and other collateral materials that pertain to the Business, including, without limitation, all designs, layouts and graphics for advertising, promotional and other displays (including signage) in the Facilities, all direct marketing materials used in connection with email, telephone and/or mail solicitations, all designs, layouts, graphics and other displays for each webpage of the Internet Store, and employee application forms and training materials for the Business (collectively, the **"Marketing Materials"**) (the materials described in the foregoing subparagraphs (i), (ii) and (iii) of this Section 4.1 are referred to herein collectively as the **"Licensed Materials"**); provided, that the Licensed Materials shall be used by Licensee only in the exact form, style, type and manner prescribed or approved by TDSF from time to time hereunder in connection with the Business. All concepts, drawings, prototypes, models, artwork, pre-production samples, production samples, blueprints, webpages and other designs for the FF&E Materials, the Disney Merchandise and the Marketing Materials that pertain to the Business, whether created by or for Licensee, must be submitted to TDSF for prior written approval in accordance with Section 5. Licensee agrees to actively exercise the rights granted to it under this Section 4.1.

4.2 Exclusions; Reservation of Rights. Except as otherwise expressly permitted by any separate written agreement between Licensee and TDSF, Licensee agrees not to use any Licensed Materials in any form or to exercise any rights granted herein in any manner other than as expressly specified in this Agreement. Notwithstanding any other provision of this Agreement to the contrary, except as specifically set forth in Section 4.1, no other properties (including any proprietary designations or intellectual property) of TDSF or any of its Affiliates are included in the Licensed Materials. Any rights with respect to the Disney Properties or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or any of its Affiliates that are not expressly granted to Licensee under Section 4.1 are reserved in their entirety to TDSF and its Affiliates.

4.3 Limitations.

4.3.1 The rights granted to Licensee hereunder are solely for the purpose of operating the Business through the Facilities and the Internet Store and do not extend to any use of Disney Properties for any other purpose, including, without limitation, catalog or direct mail sales (other than, in the case of direct mail, promotional activities in accordance with this Agreement), telephone sales (other than incidental telephone sales conducted in connection with the customer service operations of the Internet Store), sales through Mass Merchandisers or Department Stores, or any other sales of any sort (at retail, wholesale or otherwise) not originating in and transacted at a Facility or the Internet Store (other than sales to TDSF, any of its Affiliates, Other Disney Stores Operators or Liquidators as permitted by Section 6.3(i)(b) and 6.3(i)(c)).

4.3.2 The rights granted to Licensee hereunder shall not extend to two-dimensional fine art (including, without limitation, cels, sericels, serigraphs, lithographs and other fine art prints and posters), three-dimensional fine art or high-end collectibles (i.e., collectibles that are priced materially higher than comparable non-collectible products of the same type) (including, without limitation, high-end figurines, sculptures and maquettes) bearing, featuring or incorporating Disney Properties; provided, that the foregoing shall not prohibit Licensee from selling any three dimensional character props that are located in or affixed to any Facilities that are being closed or refurbished, subject to TDSF's approval in its sole discretion of the manner by which such items are sold. In addition, the rights granted to Licensee hereunder shall not extend to the creation, development, manufacture, sourcing or production of content-based merchandise or services, such as, by way of example and without limitation, motion pictures, television programming, home entertainment products, theatrical productions or books, magazines or other publications; provided, that TDSF will consider in good faith any Licensee proposals to create newsletters in connection with loyalty clubs for guests of the Facilities, but Licensee's right to produce any such newsletters shall be subject to the final approval of TDSF in its sole discretion.

4.3.3 Licensee shall not engage in any marketing, advertising or promotional campaign that consists of or includes a sweepstakes, lottery or other game of chance without in each instance obtaining the prior written consent of TDSF pursuant to Section 5, which TDSF may grant or withhold in its sole discretion. Licensee acknowledges and agrees that it is the expectation of the parties hereto that such campaigns shall be used on a limited basis only, that TDSF shall be under no obligation whatsoever to approve any such campaign, that Licensee shall be solely responsible for ensuring that any such campaign complies with the rules of such campaign and all applicable Laws in each jurisdiction in which it is conducted, including with respect to any bonding or

other comparable insurance requirements, and that Licensee shall indemnify and hold harmless TDSF and its Affiliates for any failure of any such campaign to so comply with such rules of such campaign and applicable Laws.

4.3.4 Licensee shall have the right to use Disney Merchandise as Premiums as part of marketing, advertising and promotional activities hereunder, subject in each instance to the written approval of TDSF in its sole discretion, provided, that Licensee acknowledges and agrees that it is the expectation of the parties hereto that Premiums shall be used as a part of such marketing, advertising and promotional activities on a limited basis only and that TDSF shall be under no obligation whatsoever to approve any Disney Merchandise for use as Premiums but rather shall do so only in its sole discretion. Any Premiums approved by TDSF in accordance with this Section 4.3.4 shall be subject to all of the provisions of this Agreement pertaining thereto (including, without limitation, the approval provisions set forth in Section 5).

4.3.5 Licensee acknowledges and agrees that (i) the primary benefit it seeks to obtain through the license granted under this Agreement is the ability to use, feature reproduce and display the Disney-Branded Properties on or in connection with the Licensed Materials, as opposed to the Non-Disney-Branded Properties, (ii) TDSF shall be under no obligation whatsoever to designate any Non-Disney-Branded Properties for use, reproduction or display under this Agreement but rather shall do so only in its sole discretion (provided, that in making any such determination, TDSF will not treat Licensee less favorably in any material respect than any Other Disney Store Operator has been treated by TDSF or its Affiliates with respect to the applicable Non-Disney-Branded Property), and (iii) it is the expectation of both Licensee and TDSF that Non-Disney-Branded Properties (notwithstanding those contained in Schedule 1(e), which in any case remain subject to the terms of Section 4.9) shall be designated for use hereunder only occasionally or sporadically and that, in light of that expectation, Licensee shall not be harmed or disadvantaged if TDSF does not designate any Non-Disney-Branded Properties for use, reproduction or display hereunder.

4.3.6 Notwithstanding anything to the contrary contained herein, Licensee acknowledges and agrees that its rights pertaining to the operation of the Internet Store, including, without limitation, its right to use the TDS Internet Domains, its right to use the Disney Properties in the creation or development of webpages or other design elements for the Internet Store, its right to offer for sale, sell and/or distribute Disney Merchandise at or through the Internet Store, and any and all other rights pertaining in any manner whatsoever to the Internet Store, shall not become effective until the Internet Start Date but shall thereafter continue throughout the remainder of the Term. Licensee further acknowledges and agrees that, other than the Internet Store, it shall not, and shall not be authorized or entitled under this Agreement to, operate any direct-to-consumer retail business, including, without limitation, any mail or telephone order retail business, any catalog business, or any Internet, online, electronic or "virtual" business other than the Internet Store, whether before or after the Internet Start Date (provided that the foregoing shall not be deemed to prohibit marketing or advertising activities promoting the Facilities and the Internet Store in accordance with this Agreement).

4.4 Ownership of Licensed Materials and Trademarks.

4.4.1 Ownership. Licensee acknowledges that the copyrights and all other proprietary rights in and to the Licensed Materials are exclusively owned by and reserved to TDSF and its Affiliates (or its licensors, if applicable to any Licensed Materials). Licensee shall neither acquire nor assert copyright ownership or any other rights in the Licensed Materials or in any derivation, adaptation, variation or name thereof or Trademark related thereto. The rights and powers hereby granted to Licensee in this Section 4 are those of a licensee only. Licensee acknowledges and agrees that under no circumstances shall any power granted to Licensee, or that may be deemed to be granted to Licensee, be deemed to be coupled with an interest. Without limiting the foregoing, Licensee hereby assigns to TDSF all of Licensee’s worldwide right, title and interest in and to the Licensed Materials, including, without limitation, the copyrights and all renewals and extensions thereof, and other adaptations, compilations, collective works, derivative works, variations or names of Licensed Materials, heretofore or hereafter created by or for Licensee. All such new materials are included in the definition of Licensed Materials under this Agreement. If Licensee engages, retains or otherwise involves any third party to make any contribution to the creation of any new materials included in the definition of Licensed Materials, Licensee shall obtain from such third party a full assignment of rights so that the foregoing assignment by Licensee shall vest full rights to such new materials in TDSF. In addition, all uses of any Trademarks of TDSF or its Affiliates by Licensee shall inure to TDSF’s benefit. Licensee acknowledges that, as between Licensee and TDSF, TDSF is the exclusive owner of all Trademarks of TDSF or its Affiliates, and the trademark rights created by such uses. Without limiting the foregoing, Licensee hereby assigns to TDSF all trademark rights created by its use of any Trademarks of TDSF or its Affiliates, together with the goodwill attaching to that part of Licensee’s business in connection with which such Trademarks are used.

4.4.2 Registration. Registration of copyrights, trademarks, service marks, trade names, internet domain names and URLs, industrial designs and business designations, and securing utility models and patents of inventions, belonging to TDSF or any of its Affiliates shall be the responsibility of TDSF, which may, at its option in its sole discretion and at its own expense, file all appropriate applications deemed necessary by TDSF to protect its rights, and through this Agreement those rights licensed to Licensee, in all such copyrights, trademarks, service marks, trade names, internet domain names and URLs, industrial designs, business designations, utility models and patents. Licensee shall not register or attempt to register copyrights in, or to register as a trademark, service mark, trade name, internet domain name or URL, industrial design, business designation, utility model or patent, any of the Licensed Materials, or derivations or adaptations thereof, or any word, symbol or design that is so similar thereto as to suggest association with or sponsorship by TDSF or its Affiliates. In no event shall Licensee oppose or seek to cancel or challenge, in any forum, including but not limited to the U.S. Patent and Trademark Office, any application or registration of any copyright, trademark, service mark, trade name, internet domain name or URL, industrial design, business designation, utility model, patent or other proprietary designation or intellectual property of TDSF or its Affiliates. At any time, upon TDSF’s request, Licensee agrees to execute and deliver to TDSF such assignments and/or other documents as TDSF may require to confirm the ownership of the Licensed Materials by TDSF or its Affiliates, and Licensee hereby designates TDSF as Licensee’s true and lawful attorney-in-fact and agent, for Licensee and in Licensee’s name, place and stead, in any and all capacities, solely for the purpose of executing any

such assignments and/or other documents necessary for TDSF to confirm and/or perfect the ownership of the Licensed Materials by TDSF or its Affiliates that Licensee fails to execute and deliver to TDSF within five (5) Business Days following TDSF's request. Without limiting this Section 4.4, the parties hereto acknowledge and agree that the ownership and license rights of the parties with respect to Non-Disney Technology and Elements and Product Trademarks are set forth in and governed by the provisions of Section 11.

4.5 Copyrights. As a condition to Licensee's right hereunder to use, reproduce and display the Licensed Materials, each use, reproduction or display thereof shall bear a proper copyright notice permanently affixed in the name of TDSF or its Affiliates as follows: "© Disney", or such other notice as TDSF may specify to Licensee in writing from time to time. Licensee acknowledges and agrees that all Disney Merchandise shall, in TDSF's judgment in its sole discretion, be legally authorized and entitled to be labeled with and bear the "Disney" name, and any products or merchandise that do not meet such requirement shall not be created, produced, manufactured, offered or sold hereunder as Disney Merchandise (provided, that products or merchandise that bear, feature or incorporate only Non-Disney-Branded Properties shall nonetheless qualify as Disney Merchandise hereunder if they are labeled with and bear such name(s) as TDSF shall designate in its sole discretion). Licensee will comply with all instructions as to the form, location and content of such copyright or other notices as TDSF may specify to Licensee from time to time. Licensee will not, without TDSF's prior written consent, affix to any Licensed Materials a copyright notice in any other name. If through inadvertence or otherwise a copyright notice in Licensee's name or the name of a third party should appear on any Licensed Materials, Licensee hereby (i) agrees to assign to TDSF the copyright represented by any such copyright notice in the name of Licensee or such third party and cause the execution and delivery to TDSF of all documents necessary to convey to TDSF the copyright represented by such copyright notice and (ii) designates TDSF as Licensee's true and lawful attorney-in-fact and agent, for Licensee and in Licensee's name, place and stead, in any and all capacities, to execute any such documents that Licensee fails to execute and deliver to TDSF within five (5) Business Days following any request by TDSF to Licensee to execute and deliver such documents. If by inadvertence a proper copyright notice is omitted from any Licensed Materials and if TDSF so requests, Licensee agrees, at Licensee's sole expense, to use its commercially reasonable efforts to correct the omission on all such Licensed Materials not previously sold by Licensee. Licensee agrees to advise TDSF promptly and in writing of the steps being taken to correct any such omission and to make the corrections on existing Licensed Materials not previously sold by Licensee. Without limiting the foregoing, with respect to Licensed Materials consisting of Winnie The Pooh, Licensee agrees to include on such Licensed Materials the following language: "Based on the "Winnie The Pooh" works, by A. A. Milne and E. H. Shepard."

4.6 No Rights in Music. No music or musical compositions, or any name, voice or likeness of any individual performer associated with the Licensed Materials, is licensed under this Agreement. Any charges, fees or royalties payable for music rights, name, voice or likeness rights, or any other rights not covered by this Agreement, shall be in addition to the Licensee Payments (notwithstanding that all or a portion of such charges, fees or royalties may be payable to TDSF or any of its Affiliates for their own benefit and shall not be deducted from other payments due hereunder to TDSF), and Licensee must negotiate, obtain and pay for any such rights through separate agreements, including, without limitation, for any in-store audio/video uses of Licensed Materials and all uses of Licensed Materials in Disney Merchandise. Upon request by Licensee, TDSF shall, or shall cause Disney Music Publishing or such other Affiliates of TDSF as TDSF shall designate in its sole discretion to, provide or arrange for the provision of reasonable assistance to Licensee in connection with obtaining any such rights (provided that, if any such rights are owned or controlled by third parties rather than TDSF or its Affiliates, the obligation of TDSF and its Affiliates hereunder shall be limited to providing such information (if any) with respect to such rights as is known and readily available to TDSF and its Affiliates without investigation or diligence). In the event that TDSF, Disney Music Publishing and/or such other Affiliates of TDSF so provide or arrange for such assistance, Licensee shall reimburse TDSF and/or its Affiliates for their costs and expenses incurred in connection therewith in accordance with the Allocated Cost Methodology. TDSF, Disney Music Publishing and/or such other Affiliates of TDSF shall invoice Licensee monthly in arrears for the assistance provided pursuant to this Section 4.6, and Licensee shall pay TDSF and/or its Affiliates for amounts due on each such invoice no later than twenty (20) Business Days following delivery of such invoice by TDSF, Disney Music Publishing and/or such other Affiliates of TDSF.

4.7 Film Clips. In order for Licensee to use any Licensed Materials containing film clips, Licensee must negotiate, obtain and pay for any such rights through separate agreements. Payment for such rights may include licensing and/or royalty fees and/or union re-use payments relating to the use or reproduction of compositions, recordings, artists, voices or other elements or components thereof in connection with Licensee's use of the Licensed Materials, a portion of which payments may be due to TDSF or any of its Affiliates for their own benefit and shall not be deducted from other payments due hereunder to TDSF. Any such film clip footage may not be modified or reproduced (except within the approved Licensed Materials). Promptly after the final permitted use of any film clip footage, such footage shall either be returned to TDSF or destroyed by Licensee, provided, that Licensee must provide TDSF with a written certification from its Chief Financial Officer or a senior executive officer with knowledge of or responsibility for the matters being certified stating that such film clip footage was destroyed.

4.8 Infringement; Legal Actions.

4.8.1 Notice. Promptly (and in any case within three (3) Business Days) after Licensee or its Affiliates become aware of any Disney IP Claim relating to the Business, Licensee shall provide written notice thereof to TDSF.

4.8.2 Control of Disney IP Claims Involving Licensee; Costs. In the event that Licensee or any of its Affiliates is subject to or becomes a party to any Disney IP Claim, whether as plaintiff or defendant, complainant or accused, or in any other capacity, TDSF shall have exclusive control over, and shall have sole discretion to take any such action as it deems appropriate with respect to, such Disney IP Claim. As used herein, "control" of a Disney IP Claim means the right to select counsel, to oversee and direct the actions of counsel, to approve all filings, motions and other procedures occurring in connection therewith, to approve any settlement of, or decision not to settle, such Disney IP Claim, to direct any litigation arising from such Disney IP Claim, and to

approve all other matters relating thereto. Licensee and its Affiliates (i) shall not institute any Disney IP Claim without TDSF's prior written consent (to be granted or denied by TDSF in its sole discretion), and (ii) upon TDSF's request, shall agree to be named by TDSF as a sole complainant or co-complainant in any Disney IP Claim that TDSF or its Affiliates desire to initiate. With respect to any Disney IP Claim (a) that TDSF has elected to initiate and in which Licensee is a complainant or co-complainant (other than a cross-complaint made in response to a Disney IP Claim made against Licensee, unless otherwise covered by the following subparagraph (b)) or (b) with respect to which TDSF is required to indemnify Licensee pursuant to Section 12.2, TDSF shall bear the costs of such Disney IP Claim (in the case of the preceding subparagraph (b), as and to the extent required in accordance with the provisions of Sections 12.2 and 12.3). With respect to any other Disney IP Claim to which Licensee or any of its Affiliates is a party, Licensee shall solely bear the costs of such Disney IP Claim, notwithstanding the fact that it is controlled exclusively by TDSF.

4.8.3 Cooperation. In all Disney IP Claims, Licensee shall, and shall cause its Affiliates to, cooperate and render such assistance and do such acts and things as, in the opinion of TDSF or its counsel in their business judgment, are reasonably necessary to protect and maintain TDSF's, its Affiliates' or Licensee's interests in any Disney IP Claim or otherwise to protect and maintain the Licensed Materials, the Disney Properties or any other name, brand, trademark, logo, symbol, character or other proprietary designation or intellectual property of TDSF or its Affiliates.

4.8.4 No Right to Proceeds. Licensee acknowledges and agrees that Licensee and its Affiliates are not entitled to share in any damages, proceeds or other monetary relief recovered pursuant to a Disney IP Claim (by settlement, judgment or otherwise), unless and only to the extent that such damages, proceeds or other monetary relief, or any part thereof, actually represent injuries directly sustained by Licensee as a result of its inability to sell Disney Merchandise that was owned or ordered by Licensee as of the commencement of the respective Disney IP Claim, and only to such extent and specifically excluding any damages or awards that relate to the Disney Properties in a general manner.

4.9 Withdrawal of Licensed Materials. TDSF may, at any time and from time to time during the Term, determine, in its sole discretion (a **"Withdrawal Determination"**), to withdraw or retire or not authorize or permit, either temporarily or permanently, and/or amend, modify or revoke any prior approval granted under Section 5 with respect to, the use, reproduction or display of any particular Disney Property (e.g., a particular proprietary designation or animated character), or the use, reproduction or display of any particular Disney Property with any particular Disney Merchandise, FF&E Materials, Marketing Materials or other product or service, or the use, reproduction or display of any particular Disney Property in a given manner, in each case for any reason, which may include, without limitation, (i) the extent to which a particular Disney Property supports TDSF's or its Affiliates' entertainment message, (ii) overexposure or underexposure of a particular Disney Property, (iii) other corporate brand considerations, including, without limitation, protection of the "Disney" brand, name, reputation and quality and, in the case of Non-Disney-Branded Properties, any determination by TDSF in its sole discretion that any such Non-Disney-Branded Property is no longer appropriate to offer, sell or distribute through the Facilities and/or the Internet Store or is otherwise inconsistent with or inappropriate for the image, reputation and brand of a specialty retail store operated under the *"Disney Store"* name, (iv) any alleged or actual copyright and/or trademark infringement or other Disney IP Claim, (v) any other legal consideration or rights dispute regarding any intellectual property, or (vi) termination of TDSF's and its Affiliates' license for, or the sale of, or any other loss of use by TDSF and its Affiliates of, a particular Disney Property; provided, that, (a) with respect to Disney-Branded Properties only, unless the basis for any Withdrawal Determination is one of the reasons set forth in the preceding subparagraphs (iv), (v) or (vi), TDSF shall not withdraw or retire any particular Disney-Branded Property for use hereunder in connection with any particular category or type of merchandise unless TDSF and its Affiliates shall also have, on a substantially concurrent basis, withdrawn or retired such Disney-Branded Property for use in connection with such category or type of merchandise within the Territory by TDSF, its Affiliates and their respective licensees of such Disney-Branded Property, and (b) solely with respect to the Non-Disney-Branded Properties set forth on Schedule 1(e), unless the basis for any Withdrawal Determination is one of the reasons set forth in the preceding subparagraphs (iv), (v) or (vi), TDSF shall not withdraw or retire any particular Non-Disney-Branded Property set forth on Schedule 1(e) for use hereunder in connection with any particular category or type of merchandise unless TDSF and its Affiliates shall also have, on a substantially concurrent basis, withdrawn or retired such Non-Disney-Branded Property for use in connection with such category or type of merchandise by all Other Disney Store Operators. In the event that TDSF makes a Withdrawal Determination with respect to any particular Disney Property, then TDSF may, in its sole discretion, instruct Licensee in writing to cease all manufacturing of Licensed Materials bearing, featuring or incorporating such Disney Property and to withdraw immediately any other Licensed Materials bearing, featuring or incorporating such Disney Property from the market (e.g., remove all such Licensed Materials from all Facilities and the Internet Store (including all Disney Merchandise or FF&E Materials containing such Disney Property included therein) and remove from the market all Marketing Materials (including webpages of the Internet Store) containing such Disney Property), in each case by a date determined by TDSF in its sole discretion and specified in such written instructions from TDSF (the **"Withdrawal Date"**). In accordance with TDSF's instructions, Licensee shall cease such manufacturing of and withdraw all such Licensed Materials from the market by the Withdrawal Date, subject to the following **:

---

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

4.9.1 **;

4.9.2 **; and

4.9.3 **.

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

4.10 Limitations on Licensee's Uses. Except as expressly permitted by this Agreement, Licensee shall not have the right to, and nothing in this Agreement shall be construed to give Licensee the right to, and Licensee shall not:

4.10.1 use any names, marks, symbols, copyrights, logos, characters of any kind, designs, representations, figures, drawings, ideas or other proprietary designations or properties owned, developed, created by or licensed to TDSF or any of its Affiliates (e.g., "ABC," "ESPN," "Muppets" and "Miramax");

4.10.2 use any of the Licensed Materials as Licensee's or its Affiliates' own property;

4.10.3 use any of the Licensed Materials to express or imply any endorsement of goods, products, merchandise, services or other items manufactured, supplied, offered or sold by Licensee or its Affiliates;

4.10.4 use the names "Disney," "Walter E. Disney" or any variation thereof;

4.10.5 sell, lend or otherwise distribute, with or without payment, any literature, merchandise, souvenirs or other items that use the Licensed Materials;

4.10.6 use, reproduce, distribute, display or exploit the Licensed Materials following the date of expiration or earlier termination of this Agreement, except as otherwise specifically permitted under Section 16;

4.10.7 use any of the Licensed Materials in connection with, in any manner or form, the names, marks, signs, symbols, characters, products, services, logos or other proprietary designations or intellectual property of any third parties without TDSF's prior written consent, which may be granted or denied in TDSF's sole discretion;

4.10.8 sublicense or attempt to sublicense any rights in the Licensed Materials, the Disney Properties or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or its Affiliates without TDSF's prior written consent, which may be granted or denied in TDSF's sole discretion; or

4.10.9 use any of the Licensed Materials or any other intellectual property of TDSF or any of its Affiliates in, upon or in conjunction with any goods or services of Licensee or its Affiliates.

4.11 Disney Character Appearances. Subject to the provisions of this Section 4.11, each Contract Year during the Term, upon at least twenty (20) Business Days' advance written request by Licensee, TDSF shall from time to time provide personal appearances of one (1) or more Disney Animated Characters at: (i) on a one-time basis, each Store Facility that was newly opened or as to which a Refurbishment was completed in accordance with Section 9.3 during such Contract Year and (ii) such additional designated Store Facilities as may be approved by TDSF in its sole discretion (such appearances collectively, the **"Character Appearances"**). In connection with each Licensee request, Licensee shall propose the time, date, Store Facility, requested character(s) and a description of how the requested Character Appearance promotes the brand and entertainment message of both TDSF and its Affiliates and Licensee. Each Character Appearance and all aspects and components thereof, including, without limitation, whether a particular Character Appearance is approved, how many Character Appearances may be approved in any particular time period (subject to subparagraphs (i) and (ii) of this Section 4.11) and how many Disney Animated Characters may appear at any particular Character Appearance, shall be subject to TDSF's prior written approval, which approval may be granted or denied in TDSF's sole discretion. Licensee acknowledges and agrees that, except for situations involving special circumstances (which shall be adequately demonstrated to TDSF by Licensee), TDSF shall not provide more than four (4) Disney Animated Characters at a single Character Appearance. In determining whether to grant or deny approval for a requested Character Appearance, TDSF may (but shall not be required to) take into account the following factors (which are meant to be illustrative and not definitive nor limiting in any fashion): (a) the safety of TDSF personnel and guests, (b) character availability and prior commitments, (c) conflicting activities of TDSF and/or its Affiliates and (d) marketing determinations concerning overexposure and underexposure of one (1) or more of the Disney Animated Characters. Licensee acknowledges and agrees that a crucial element of any Character Appearance is the placement of the Disney Animated Characters in a relevant, themed environment; therefore, Licensee agrees to follow TDSF's direction concerning all aspects of any approved Character Appearance to ensure that such appearance satisfies the mutual common goal of presenting a quality, positive experience to the audience. Licensee shall comply with all guidelines, rules and regulations respecting the use of Disney Animated Characters and Character Appearances as TDSF may adopt from time to time during the Term, including, without limitation, TDSF's then-current character use guidelines. All approved Character Appearances shall be made by personnel of TDSF or its Affiliates. Licensee shall bear all costs and expenses and shall reimburse TDSF in full for those costs associated with any Character Appearance, including, without limitation, labor, including per diem costs, transportation, accommodations, and creative development and implementation costs associated with any such appearance. For purposes of this Section 4.11, the term **"Disney Animated Characters"** shall mean employees of TDSF or its Affiliates in costumes representing those animated characters solely owned and controlled by TDSF and/or its Affiliates, excluding (unless otherwise permitted by TDSF, on a case by case basis) the Winnie the Pooh characters (i.e., Winnie the Pooh, Christopher Robin, Piglet, Rabbit, Eeyore, Tigger, Owl, Gopher, Kanga, Roo and Heffalump), that TDSF in its sole discretion may designate from time to time during the Term for use in connection with one (1) or more appearances of such characters in public only.

4.12 Certain Obligations to Third Parties. In connection with Licensee's use of Disney Properties under this Agreement, Licensee shall, as and to the extent required by TDSF in order to ensure compliance with TDSF's or its Affiliates' obligations owed

to third parties with respect to any Disney Property, (a) provide any third party designated by TDSF with samples of merchandise bearing, featuring or incorporating the respective Disney Property and/or (b) comply with any trademark, service mark and/or copyright notice requirements or other intellectual property placement requirements of any third party associated with the respective use of the Disney Property. In addition, notwithstanding anything to the contrary contained herein, including, without limitation, Section 17, TDSF and/or its Affiliates shall be entitled to provide third parties with sales data, forecasts, projections and other financial information received by TDSF from Licensee hereunder, including, without limitation, the sales data contemplated by Section 9.11.1, to the extent necessary to ensure compliance with TDSF's or its Affiliates' obligations owed to third parties with respect to any Disney Property or to the extent necessary, as determined by TDSF in its sole discretion, to facilitate TDSF's or its Affiliates' relationships with such third parties (provided that under no circumstances shall Licensee be entitled to any inspection, audit or comparable rights with respect to such third party Contracts, whether any demand or request is made pursuant to the terms of this Agreement or in connection with any dispute or controversy that may arise hereunder or any attempted discovery thereof in connection with such dispute or controversy, whether by way of document production, interrogatories, depositions or other discovery method). In the event that TDSF provides third parties with information received from Licensee pursuant to the preceding sentence, TDSF shall, subject to the terms of any confidentiality restrictions with such third party, endeavor to provide Licensee with notice of the information so furnished and the identity of the third party to whom such information was furnished. Any failure by TDSF to provide Licensee with such notice and/or identify the third party to whom such information was furnished shall not be deemed a breach by TDSF of this Agreement.

5. TDSF'S APPROVAL PROCEDURES.

5.1 Disney Merchandise Approvals. Licensee shall not create, develop, manufacture, produce or offer for sale, through the Facilities, the Internet Store or otherwise, any article of Disney Merchandise, including any containers and packaging for such Disney Merchandise (collectively, each, an "**Article**"), regardless of whether such Disney Merchandise bears, features or incorporates any Disney Properties, without first obtaining TDSF's approval in accordance with the provisions set forth in this Section 5.1 in each instance.

5.1.1 Approval of Conceptual Materials and Pre-Production Samples.

(a) As early as possible, and in any case before commercial production of any Article, Licensee shall submit to TDSF for TDSF's review and to obtain TDSF's written approval (to utilize such materials in preparing a pre-production sample), all concepts, preliminary and proposed final artwork, and, to the extent relevant, three-dimensional models and any other comparable pre-production materials (collectively, the "**Conceptual Materials**") that are to appear on or in each SKU of the Article. TDSF shall use commercially reasonable efforts to approve or disapprove such submission within ten (10) Business Days following such submission of such Conceptual Materials. If TDSF approves in writing the Conceptual Materials, then Licensee thereafter shall submit to TDSF for TDSF's written approval a pre-production sample of each SKU of each Article, together with the test reports required by Section 5.1.4(b)(ii). TDSF shall use commercially reasonable efforts to approve or disapprove such submission within ten (10) Business Days following such submission of such pre-production sample(s). TDSF may approve or disapprove any such pre-production sample based on, as determined by TDSF in its sole discretion: (i) lack of conformity of such pre-production sample to the approved Conceptual Materials, (ii) unacceptable quality of the Article (including any artwork included therewith) as manufactured, (iii) the results of the test reports submitted pursuant to Section 5.1.4(b)(ii), or (iv) such other factors as TDSF may determine on a case-by-case basis in its sole discretion. All Conceptual Materials and pre-production samples described in this Section 5.1.1 shall be submitted to the individual so designated from time to time by TDSF.

(b) In each instance where TDSF fails to provide Licensee with any communication indicating TDSF's approval or disapproval of Licensee's submissions of Conceptual Materials or pre-production samples, as applicable, within the ten (10) Business Day period described in subparagraph (a) of this Section 5.1.1, Licensee shall be entitled to provide TDSF with written notice of such failure to communicate any response and, if Licensee provides such written notice and TDSF fails to communicate its approval or disapproval of to the applicable submission within two (2) Business Days following such written notice from Licensee, then such failure shall be deemed a "**Response Failure**." Following an initial Response Failure with respect to any particular submission of Conceptual Materials or pre-production samples, if another ten (10) Business Days elapses without communication of an approval or disapproval from TDSF, then Licensee shall be entitled to provide an additional written notice of such failure to communicate a response and, if Licensee provides such additional written notice and TDSF fails to communicate its approval or disapproval of such submission within two (2) Business Days following such additional written notice, then such failure to communicate a response shall also be deemed a "**Response Failure**." Following such second Response Failure, the foregoing notification process may continue until TDSF communicates its approval or disapproval of the applicable submission and any subsequent failure by TDSF to communicate its approval or disapproval of such submission within two (2) Business Days following written notice from Licensee in accordance with the foregoing provisions shall also be deemed a "**Response Failure**." Within twenty (20) Business Days following the end of each half (1/2) of each Contract Year, TDSF shall pay to Licensee an amount (if positive and if any) equal to (i)(A) the number of Response Failures occurring during the immediately preceding six (6) Retail Months of such Contract Year minus fifteen percent (15%) of the aggregate number of submissions by Licensee to TDSF of Conceptual Materials and pre-production samples during such six (6) Retail Month period of such Contract Year, multiplied by (B) Five Hundred Dollars ($500), minus (ii) Five Hundred Dollars ($500) (such amount, the "**Response Failure Fee**") by wire transfer to an account designated by Licensee in writing. Notwithstanding anything to the contrary contained herein, other than referral of repetitive Response Failures to the Joint Advisory Committee pursuant to Section 8.3.6, the Response Failure Fee shall be Licensee's sole and exclusive remedy for any and all Response Failures and Licensee shall have no other recourse or remedy nor be entitled to any abatement or reduction of any payments or other obligations hereunder on account of any such Response Failures.

(c) In addition to the foregoing subparagraphs (a) and (b) of this Section 5.1.1, (i) in any case where Licensee has re-submitted Conceptual Materials and/or pre-production samples that were previously approved or disapproved by TDSF under this Section 5.1.1 and were subject to only minor revisions or refinements, TDSF shall respond to such re-submission within five (5) Business Days following Licensee's submission of such revisions or refinements, (ii) during each Monday-through-Friday period during the Term, TDSF shall, upon Licensee's request, use its commercially reasonable efforts to respond to up to five (5) submissions of Conceptual Materials and/or pre-production samples within two (2) Business Days rather than ten (10) Business Days, and (iii) if, during any Retail Month, TDSF fails to respond to at least seventy-five percent (75%) of all submissions of Conceptual Materials and/or pre-production samples during such Retail Month within six (6) Business Days or less, such response rate shall be reviewed by the Joint Advisory Committee pursuant to Section 8.3.6 to determine strategies for improving TDSF's rate of response to such submissions. Notwithstanding anything to the contrary contained herein, such review by the Joint Advisory Committee pursuant to subparagraph (c)(iii) of this Section 5.1.1 shall be Licensee's sole and exclusive remedy for any and all failures by TDSF to so respond to at least seventy-five percent (75%) of such submissions within such six (6) Business Day period as described in subparagraph (c)(iii) of this Section 5.1.1 and Licensee shall have no other recourse or remedy nor be entitled to any abatement or reduction of any payments or other obligations hereunder on account of any such failures. Licensee shall not be permitted to proceed to the next stage of the Disney Merchandise approval process under Section 5.1.2 until Licensee has obtained TDSF's written approval of the Conceptual Materials and the pre-production samples with respect to each SKU of a particular Article pursuant to this Section 5.1.1.

5.1.2 Approval of Production Samples.

(a) Before offering for sale to consumers any Article of Disney Merchandise in the Facilities or the Internet Store, Licensee agrees to furnish to TDSF, from the first production run of each supplier of such Article, for TDSF's approval, three (3) production samples of each SKU of such Article or such smaller number as TDSF may direct in its sole discretion from time to time. In addition, one (1) production sample of each SKU of such Article shall be sent directly to TDSF's Copyright and Trademark Registration Department. Such production samples must conform in all respects to the approved Conceptual Materials and pre-production samples (other than immaterial variations that are not related to any Disney Property in any manner whatsoever). Any production sample of an Article for which TDSF has approved a pre-production sample pursuant to Section 5.1.1, which production sample conforms in all respects to such approved pre-production sample (other than immaterial variations that are not related to any Disney Property in any manner whatsoever), shall be deemed approved by TDSF, provided, that TDSF shall be entitled, at any time within ten (10) Business Days following Licensee's submission of such production sample, to disapprove any such production sample based on (i) lack of conformity of such production sample to the approved Conceptual Materials or pre-production sample in any manner (other than immaterial variations that are not related to any Disney Property in any manner whatsoever), or (ii) unacceptable quality of the Article (including any artwork included therewith) as manufactured, in each case as determined by TDSF in its sole discretion, by providing written notice to Licensee of such disapproval, which notice shall identify the manner in which such production sample does not conform to the approved Conceptual Materials or pre-production sample or in which such production sample has failed to achieve an acceptable level of quality as compared to the quality of the pre-production sample. Any SKU of any Article not approved by TDSF in accordance with the foregoing provisions shall, unless otherwise agreed by TDSF in writing, be destroyed. Such destruction shall be attested to in a certificate signed by one of Licensee's officers. Licensee agrees to give TDSF written notice (which notice may be in the form of "on-order" reports detailing orders placed by Licensee with Manufacturers) of the first ship date for each production sample when Licensee provides the production sample to TDSF's Copyright and Trademark Registration Department in accordance with this Section 5.1.2(a).

(b) Licensee agrees to make available at no charge up to but no more than four (4) production samples of any or all SKUs of each Article as TDSF may from time to time request for the purpose of comparison with earlier production samples, for TDSF's anti-piracy efforts, or for such other purposes as TDSF may determine in its sole discretion. This subparagraph (b) shall be in addition to the requirements of Section 4.12.

(c) No modification of an approved production sample (other than immaterial modifications not related to any Disney Property) shall be made without TDSF's further prior written approval. Each SKU of an Article being sold must conform in all respects to the production sample approved for sale, except with regard to immaterial changes that may appear from time to time during the actual production of such SKU of an Article. It is understood that, except with regard to any immaterial changes described in the foregoing sentence, if, in TDSF's sole discretion, the quality of any SKU of an Article originally approved has deteriorated in later production runs or if the SKU has otherwise been altered, TDSF may, in addition to other remedies available to TDSF, by written notice require such SKU of an Article to be immediately withdrawn from the market at Licensee's sole cost and expense. Accordingly, TDSF recommends that Licensee submit production samples to TDSF for approval before committing to a large original production run or committing to purchase a large shipment from a new supplier.

5.1.3 General Matters Regarding Disney Merchandise Approvals.

(a) If any unapproved SKU of any Article is being sold, TDSF may, together with other remedies available to TDSF, by written notice require such SKU of such Article to be immediately withdrawn from the market solely at Licensee's sole cost and expense. Any modification of any SKU of an Article (other than immaterial modifications not related to any Disney Property), including, without limitation, change of materials, color, design or size of the Licensed Materials, must be submitted in advance for TDSF's written approval as if it were a new SKU of an Article. Approval of any SKU of an Article that uses particular artwork does not imply approval of such artwork for use with a different Article. The fact that artwork has been taken from a Disney Property or a previously approved Article does not mean that its use will necessarily be approved in connection with an Article licensed hereunder.

(b) If Licensee knowingly submits for approval artwork from an article of merchandise manufactured or published by another licensee of TDSF or of any of TDSF's Affiliates, Licensee must advise TDSF in writing of the source of such artwork. If Licensee fails to do so, any approval that TDSF may give for use by Licensee of such artwork may be withdrawn by giving Licensee written notice thereof, and Licensee may be required by TDSF not to sell any Article using such artwork.

(c) If TDSF has supplied Licensee with forms for use in applying for approval of Conceptual Materials, pre-production samples and production samples of Articles, Licensee shall use such forms when making submissions for TDSF's approval.

(d) If the likenesses and product application of the Disney Properties used on or in connection with the Articles are subject to any third party approvals that TDSF deems necessary for Licensee to obtain, then TDSF will act as the liaison with such third parties (or, with TDSF's consent, in its sole discretion, Licensee may deal directly with such third parties) during the approval process, provided, that Licensee shall be solely responsible for any costs or fees incurred in connection with obtaining such approvals.

(e) Except as permitted under Section 6.3(i)(c) hereof, the rights granted hereunder do not permit the sale of "seconds" or "irregulars."

(f) Licensee acknowledges that TDSF may not approve Conceptual Materials perceived to be for selling periods beyond the Term.

(g) At any time during the Term, TDSF shall have the right, in its sole discretion, by written notice to Licensee, to require modification of any SKU of any Article that was previously approved by TDSF in accordance with this Section 5.1, provided, that such notification shall advise Licensee of the nature of the changes required and shall be subject to the terms of Section 4.9 (including the reimbursement provisions set forth in such Section as if such notification were a Withdrawal Determination).

(h) In the event that Licensee demonstrates, to the satisfaction of TDSF in its business judgment, that a Disney-Branded Property proposed to be featured on or incorporated in any SKU of any Article submitted by Licensee to TDSF for approval under this Section 5.1 is, at the time of such submission, featured on or incorporated in a consumer product of the exact same type as such submitted Article, which consumer product is available for retail purchase within the Territory or from an Other Disney Store Operator outside of the Territory and is being distributed by TWDC, its Affiliates, any of TWDC's third party licensees or any Other Disney Store Operator, then TDSF shall not withhold its approval of the use of such Disney-Branded Property on such SKU of such Article proposed by Licensee, provided, that, (i) if such Disney-Branded Property is, at the time of such submission, featured on a consumer product that is available for purchase from and is being distributed by an Other Disney Store Operator outside of the Territory, TDSF may, in its sole discretion, impose conditions or other restrictions in connection with such approval of the use of such Disney-Branded Property on such SKU of such Article by Licensee within the Territory based on such considerations and factors relating to the Territory as TDSF may deem relevant in its sole discretion, including, without limitation, release schedules for entertainment properties within the Territory, overexposure and underexposure of particular Disney-Branded Properties within the Territory and other factors relating to the timing of the introduction of such SKU of such Article within the Territory, and (ii) Licensee shall nonetheless be required to obtain all other approvals from TDSF required pursuant to this Section 5.1, including, without limitation, approval of the form, style and manner in which such Disney-Branded Property is used in connection with such SKU of such Article. If Licensee believes any submission to TDSF is made in accordance with this Section 5.1.3(h), Licensee shall so indicate to TDSF in writing at the same time Licensee submits Conceptual Materials to TDSF in accordance with Section 5.1.1.

(i) With respect to any submission of Conceptual Materials, pre-production samples and/or production samples of apparel Articles that are expected to be manufactured and offered for sale in more than one (1) size, (a) Licensee shall identify each size of such Article that is expected to be manufactured and offered for sale, which sizes shall be within size standards established from time to time by Licensee and approved by TDSF in its sole discretion ("**Conforming Sizes**") or, if not within the Conforming Sizes, shall be separately identified as being outside of the Conforming Sizes ("**Non-Conforming Sizes**"), (b) Licensee shall not be required to provide samples of each size to be manufactured and offered for sale but rather shall only be required to provide (1) with respect to Conforming Sizes of any Article of children's apparel, a pre-production sample and production sample in at least one (1) of such Conforming Sizes, (2) with respect to Conforming Sizes of any Article of adult apparel, a pre-production sample and production sample in at least one (1) of such Conforming Sizes, (3) in the event that Licensee determines in its business judgment that the presentation of any element or component of the Disney Properties in Conforming Sizes of any Article of children's apparel or adult apparel varies based on size, at least one (1) additional sample of such Conforming Sizes to demonstrate such variations, and (4) with respect to Non-Conforming Sizes of any Article, pre-production samples and production samples in each of such Non-Conforming Sizes, and (c) TDSF shall be entitled, in its sole discretion, to approve or disapprove any apparel Article within specified sizes or ranges of sizes (e.g., approval of an Article in children's sizes but not in adult sizes) based on the appropriateness of the applicable Disney Properties for certain age groups, the appearance of certain apparel Articles in various sizes, the presentation of Disney Properties in various sizes, or such other factors as TDSF shall determine in its sole discretion.

5.1.4 Manufacturing/Sourcing.

(a) International Labor Standards **("ILS")**; Compliance.

(i) Licensee agrees to engage at its expense a TDSF-approved audit firm ("**Audit Firm**") to evaluate and monitor the vendors and manufacturers used to design, produce, manufacture, package or distribute the Articles and components of the Articles (the "**Manufacturers**"). The Audit Firm (and, if TDSF elects in its sole discretion to participate in any audit, TDSF or its Affiliates) shall use TDSF's policies and protocol in conducting audit activities and measuring compliance with TDSF's Code of Conduct for Manufacturers (the "**Code**," which is set forth in Section 6 of the form of Manufacturer's Agreement set forth in Schedule 5.1.4(a-1) (such Manufacturer's Agreement, as it may be revised from time to time with the approval of TDSF in its sole discretion, the "**Manufacturer's Agreement**")). In connection with the use of Manufacturers, Licensee and TDSF shall in good faith mutually develop and, at least once per Contract Year within thirty (30) days following the commencement of each Contract Year, review a compliance program, an audit schedule, a reporting process and a definition and approach to high-risk countries, provided that each of the foregoing and any amendments or modifications thereto shall be subject to the final approval of TDSF in its sole discretion. Licensee agrees to require all Manufacturers to comply with the Code, which includes the Manufacturer's consent to, among other things, unannounced on-site inspections of manufacturing, packaging and distribution facilities and employer-provided housing, reviews of books and records relating to employment matters, and private interviews with employees. Any amendments or modifications to the Code, the Manufacturer's Agreement, the Manufacturer's Memorandum of Understanding set forth in Schedule 5.1.4(a-2) (the "**Manufacturer's MOU**") or the Manufacturer's Facility and Merchandise Authorization Form set forth in Schedule 5.1.4(a-3) (the "**Manufacturer's FAMA**") shall be subject to the approval of TDSF in its sole discretion, provided, that (x) TDSF shall consult in good faith with Licensee regarding any such amendments or modifications proposed by TDSF prior to implementing such amendments or modifications, (y) following such consultation with Licensee, TDSF shall make any final determination as to whether and how to implement any such amendments or modifications in its sole discretion and (z) TDSF shall not propose any such amendments or modifications unless such amendments or modifications shall also apply to substantially all Softline and/or Toys/Plush consumer products licensees of TDSF and its Affiliates within the Territory.

(ii) Licensee agrees to have the Audit Firm conduct a compliance inspection of each Manufacturer prior to any production of Articles in its facility and to use only Manufacturers that are shown to be in compliance with such inspection. Licensee also agrees to conduct its own investigation of any claimed or observed violations of the Code and, if Licensee finds there have been violations of the Code, to take appropriate and prompt steps to correct such violations.

(iii) Licensee shall provide advance consent to the Audit Firm to report the audit findings from the compliance inspection of each Manufacturer directly to TDSF, with a copy to Licensee if Licensee determines to use such Manufacturer to design, produce, manufacture, package or distribute Articles or components of the Articles. If egregious violations are identified (as determined by TDSF in its sole discretion) during any audit (or through Licensee's or TDSF's or their respective Affiliates' own investigations), Licensee shall no longer use such Manufacturer for the Articles. With respect to any other violations, TDSF will prepare a corrective action plan ("**CAP**") letter and designate for Licensee a commercially reasonable follow-up audit time-frame. Licensee will inform the Manufacturer of the necessary corrective actions and the time-frame for the follow-up audit. Licensee shall work with the Manufacturer to ensure that remedial actions are promptly implemented by the Manufacturer.

(iv) Licensee at its expense shall have the Audit Firm perform the follow-up audit in the time-frame designated in the CAP letter and report the findings directly to TDSF promptly following the audit. If violations are still found, TDSF will prepare a follow-up CAP letter. Licensee shall again work with the Manufacturer to ensure that remedial actions are promptly implemented by the Manufacturer and, at Licensee's expense, shall again have the Audit Firm perform a follow-up audit in the time-frame designated in the CAP letter and report the findings promptly to TDSF. The process outlined in this subparagraph (iv) shall continue until the Manufacturer reaches compliance with the Code, Licensee elects to terminate or TDSF, in its sole discretion, directs Licensee to terminate the non-compliant Manufacturer.

(v) Licensee acknowledges that TDSF is relying on Licensee's commitment to enforce the Code in factories and facilities used to produce the Articles. If requested by TDSF, Licensee will advise the public or other third parties that Licensee's Manufacturers are contractually responsible to Licensee for adherence to the Code and that Disney has in good faith relied upon Licensee to assure compliance with the Code.

(b) Product Safety. Licensee is fully and solely responsible for the consistent safety of the Articles and for the compliance of the Articles with applicable Laws (including, without limitation, applicable product safety Laws), applicable industry standards, the Disney Product Guidelines and the warranties with respect thereto set forth in Section 9.6.4. Any Article that fails to comply with any applicable Law or the Disney Product Guidelines shall be deemed disapproved, even if previously approved by TDSF, and shall not be sold. Before Licensee puts any Article on the market, if such Article is of a type that is required to be safety tested pursuant to the Disney Product Guidelines, Licensee shall ensure that (i) such Article has been submitted for safety testing to the Product Safety Laboratory, which shall produce a written report of such safety testing, (ii) the written report of each such product safety test for each such Article so submitted has been delivered to TDSF, and (iii) if the test result for such Article was not positive in any respect or if the test result proposes or recommends any modifications to make the Article safer, at least three (3) Business Days have elapsed following the delivery of such written test report to TDSF without notice from TDSF that such Article has been disapproved by TDSF on the basis of such negative or qualified test report (whether such qualification is based on or consists of a recommendation or proposal or other suggested modification) (and TDSF shall be entitled to disapprove any Article on the basis of any such product safety test report in its sole discretion, provided that TDSF shall provide Licensee with its reason or reasons for such disapproval). If Licensee determines that any Article does not need to be safety tested pursuant to the Disney Product Guidelines, Licensee shall report to the Product Safety Director that such Article is not of the type that is required to be safety tested pursuant to the Disney Product Guidelines and shall consult in good faith with the Product Safety Director with respect thereto, provided that the final determination regarding whether any Article is required to be safety tested pursuant to the

Disney Product Guidelines shall be made by TDSF or its Affiliates in their respective sole discretion. Both before and after Licensee puts any Article on the market, Licensee shall ensure that its Manufacturers follow such additional reasonable and proper procedures as may be necessary to ensure safety control and to ensure that the Articles comply with all applicable Laws and the Disney Product Guidelines and shall permit TDSF or its designee to inspect testing, manufacturing and safety control records and procedures and the Product Safety Laboratory and to test Articles for compliance with product safety and other applicable Laws and will implement any reasonable and/or necessary changes in design, materials, manufacturing, labeling or packaging intended to make any Article more safe or as may be desirable as determined by TDSF and/or its Affiliates in their respective sole discretion to protect the image, quality and/or reputation of the Disney Properties and/or Disney Merchandise. Licensee and/or its Manufacturers shall provide written notice to TDSF within five (5) Business Days following receipt of any notice of any claim or suit filed with respect to any Article, or of any investigation, directive or notice from the U.S. Consumer Product Safety Commission or any other governmental safety agency. No approval, disapproval or omission of approval or disapproval by TDSF with respect to any Article given or not given to Licensee or any Manufacturer under this Agreement shall in any way lessen or mitigate Licensee's full and sole responsibility under this subparagraph (b) nor constitute or imply any opinion by TDSF that any Article is safe or complies with applicable Laws or the Disney Product Guidelines. Licensee shall coordinate all activities pertaining to product safety and product safety testing pursuant to this Section 5.1.4(b) with the Product Safety Director. Any breach of this Section 5.1.4(b) by Licensee that has an adverse impact on the reputation, image or brand of the Disney Properties or that results in injury to person shall be deemed a Material Breach of this Agreement by Licensee.

(c) Approval of Manufacturers. In addition to any requirements set forth in Section 5.1.4(a), Licensee shall be required to use only Manufacturers that are approved in advance in writing by TDSF in its sole discretion and that have executed a Manufacturer's Agreement, a Manufacturer's FAMA and, to the extent required by TDSF, a Manufacturer's MOU. With respect to any Manufacturer that entered into a Manufacturer's Memorandum of Understanding with Licensee prior to the Effective Date but in a different form than the Manufacturer's MOU, Licensee shall be required to terminate its relationship with any such Manufacturer unless, within forty (40) Business Days following the Effective Date, Licensee and such Manufacturer shall have entered into a Manufacturer's MOU in the form contained on Schedule 5.1.4(a-2). TDSF shall provide Licensee with a list of any pre-approved Manufacturers for Articles, and Licensee shall be entitled to use each such pre-approved Manufacturer for a period of up to six (6) months following the Effective Date, during which time Licensee shall cause the Audit Firm to conduct a compliance inspection of each such Manufacturer to confirm its compliance with the Code and all other requirements of this Section 5.1.4. If any such Manufacturer is not inspected by the Audit Firm within such 6-month period, it shall be deemed disapproved by TDSF hereunder as of the end of such 6-month period, and if such inspection is conducted for any such Manufacturer and such inspection indicates that such Manufacturer is not in compliance with the Code or such other requirements, such Manufacturer shall, as determined by TDSF in its sole discretion, either be deemed disapproved by TDSF hereunder or be subject to the corrective actions set forth under Section 5.1.4(a) with respect to non-compliant Manufacturers. TDSF's decision to grant or deny its approval of any Manufacturers not on TDSF's pre-approved list shall be made by TDSF in its sole discretion, for any reason or no reason, including, without limitation, TDSF's interest in maintaining the highest product quality standards, the subject Manufacturer's ILS record, the subject Manufacturer's credit history, and TDSF's interest in maintaining consistency and continuity in the presentation of its brands in the marketplace. Licensee shall ensure that, upon the date of termination or expiration of a Manufacturer's Agreement, a Manufacturer's FAMA or, as applicable, a Manufacturer's MOU, the subject Manufacturer shall cease production of all Articles and all components thereof and shall otherwise comply with the terms of the Manufacturer's Agreement, the Manufacturer's FAMA and the Manufacturer's MOU with respect to termination of the relationship.

(d) Name and Address of Licensee. With respect to Disney Merchandise ordered after the Effective Date, the name and address of Licensee (i) must appear on permanently affixed labeling on each Article of such Disney Merchandise, or (ii) if such Article of such Disney Merchandise is sold to the public in packaging or a container, must be printed on such packaging or container. On Softlines, "permanently affixed" shall mean sewn on.

(e) Unauthorized Activities. If any Manufacturer utilizes any Licensed Materials for any unauthorized purpose, Licensee shall cooperate fully in bringing such utilization to an immediate halt and, upon TDSF's request, Licensee shall immediately terminate its relationship with such Manufacturer for the production, manufacturing, packaging and/or distribution of any Articles.

(f) Potential Internal Audit Compliance Team and Product Safety Laboratory. Upon Licensee's request from time to time during the Term, TDSF shall explore the possibility of Licensee's use of an internal compliance audit team (with respect to inspections of Manufacturers under Section 5.1.4(a)) and/or an internal product safety laboratory (with respect to product safety testing pursuant to Section 5.1.4(b) relating to specified elements or components of certain Articles) in either case comprised of Licensee's and/or its Affiliates' employees, as opposed to the third-party Audit Firm contemplated by Section 5.1.4(a) and/or the third-party Product Safety Laboratory contemplated by Section 5.1.4(b), as the case may be, to conduct the functions of the Audit Firm or the Product Safety Laboratory, as applicable, as contemplated by this Section 5.1.4, provided that (i) any such internal compliance audit team and/or internal product safety laboratory shall be required to comply with such conditions with respect to capabilities as TDSF shall determine are necessary in its sole discretion, (ii) any such internal compliance audit team and/or internal product safety laboratory shall be subject to periodic review by the Product Safety Director and TDSF and its Affiliates, with the right to revoke its authorization hereunder if TDSF determines that the terms and conditions imposed upon such internal compliance audit team and/or internal product safety laboratory have not been satisfied in any respect, and (iii) the final determination with respect to whether Licensee shall be entitled to use any such internal compliance audit team and/or internal product safety laboratory, and any determination to revoke Licensee's use of any such internal compliance audit team and/or internal product safety laboratory if it is approved at any time, shall be made by TDSF in its sole discretion, and Licensee shall not be entitled to any right or remedy or any abatement of any obligations hereunder in the event that TDSF does not approve, or revokes any approval of, any such internal compliance audit team and/or internal product safety laboratory.

5.2 FF&E Materials and Marketing Materials Approvals. Licensee shall not create, develop, manufacture, produce, use or distribute (i) any Marketing Materials for the Business, regardless of whether such Marketing Materials bear, feature or incorporate any Disney Properties, or (ii) any FF&E Materials that bear, feature or incorporate any Disney Properties, without first obtaining TDSF's approval in accordance with the provisions set forth in this Section 5.2 in each instance.

5.2.1 Original Submissions. Licensee shall submit to TDSF for approval (i) all prototype (i.e., rough draft) drawings, designs, architectural renderings, materials, samples and other media (including, without limitation, publicity copy, artwork and layout) pertaining to the FF&E Materials and Marketing Materials, (ii) a brief statement setting forth the proposed use to which such materials will be put (including, if applicable, the media or channels through which and the period of time during which such materials will be distributed or displayed), (iii) if the materials being submitted by Licensee are Marketing Materials and involve purchases of broadcast media (e.g., over-the-air television, cable television, satellite television and radio), print media (e.g., newspapers, periodicals and other publications), outdoor advertising (e.g., billboards and other signage) or any other forms of traditional media advertisements, a draft of a promotional brief in the form of Schedule 5.2.1, duly completed by Licensee (the "**Promotional Brief**"), and (iv) all other background information and supporting material as will be reasonably necessary, or as TDSF may reasonably request, to allow TDSF to make an informed judgment and appraisal for purposes of TDSF's approving or disapproving Licensee's request to use such Licensed Materials. Licensee shall use commercially reasonable efforts to submit all such materials described in this Section 5.2.1 to the individual so designated by TDSF at least sixty (60) Business Days prior to the date of first intended use. Licensee may, in connection with any original submission under this Section 5.2.1 of Marketing Materials that will be used solely within the Facilities or the Internet Store (collectively, "**In Store Materials**"), designate such submission as an advertising template that will be used for multiple advertisements over a specified period of time with all elements of such template (including, without limitation, the use of Disney Properties therein), other than certain specified information, remaining unchanged with each use thereof (each, a "**Template**"). With respect to any proposed Template, Licensee shall specify (a) the features and information contained in such Template that will be changed with each use thereof, which may not under any circumstances consist of any changes involving or impacting any of the Disney Properties, (b) the period of time during which such Template will be used, and (c) the channels of distribution for such Template (i.e., within the Facilities and/or the Internet Store). A Template that has been approved by TDSF pursuant to Section 5.2.2 is referred to herein as an "**Approved Template**." Subject to Section 5.2.3, Licensee shall be entitled to use any Conforming Approved Template during the approved time period without re-submitting such Conforming Approved Template for approval pursuant to Section 5.2.2, provided, that, for purposes of clarification, except as otherwise provided in Section 5.2.2, all of the requirements set forth in this Section 5.2 with respect to In Store Materials shall apply to Non-Conforming Approved Templates and Minor Revision Approved Templates. Notwithstanding anything to the contrary contained herein, TDSF shall have the right in its sole discretion to alter, modify, discontinue or terminate the use of any Approved Template at any time upon twenty (20) Business Days' advance written notice to Licensee.

5.2.2 Preliminary Approval.

(a) Provided that Licensee has fully complied with Section 5.2.1, TDSF shall use its commercially reasonable efforts to notify Licensee of its preliminary approval or disapproval of Licensee's submission of proposed materials (including the proposed use to which such materials will be put and, if applicable, the media or channels through which and the period of time during which such materials will be distributed or displayed) and, as applicable, the Promotional Brief (i) in the case of In Store Materials (including any proposed Template but excluding any Approved Template), within ten (10) Business Days following Licensee's submission of the information required to be submitted pursuant to Section 5.2.1, (ii) in the case of Non-Conforming Approved Templates, within ten (10) Business Days following Licensee's submission of the information required to be submitted pursuant to Section 5.2.1, (iii) in the case of Minor Revision Approved Templates, within two (2) Business Days following Licensee's submission of the information required to be submitted pursuant to Section 5.2.1, (iv) in the case of FF&E Materials, within fifteen (15) Business Days following Licensee's submission of the information required to be submitted pursuant to Section 5.2.1, (v) in the case of Marketing Materials that are not In Store Materials, including, without limitation, Marketing Materials pertaining to the purchase and/or use of broadcast media, print media or outdoor advertising, Marketing Materials to be used in connection with direct marketing activities (including, without limitation, email, telephone and/or mail solicitations), and any other Marketing Materials to be distributed or used outside of the Facilities and the Internet Store (collectively, "**Out of Store Materials**") (other than Out of Store Materials consisting of a single piece direct mail solicitation), within twenty (20) Business Days following Licensee's submission of the information required to be submitted pursuant to Section 5.2.1, and (vi) in the case of Out of Store Materials consisting of a single piece direct mail solicitation (including e-mail solicitations), within fifteen (15) Business Days following Licensee's submission of the information required to be submitted pursuant to Section 5.2.1. For purposes of clarification, pursuant to and subject to the terms of Section 5.2.1, Licensee need not submit Conforming Approved Templates for approval pursuant to this Section 5.2.2.

(b) In each instance where TDSF fails to provide Licensee with any communication indicating TDSF's approval or disapproval of Licensee's submissions of In Store Materials that are designed to be used in substantially all of the Facilities (collectively, "**Chain Wide In Store Materials**") within the ten (10) Business Day period described in Section 5.2.2(a)(i) or 5.2.2(a)(ii), as applicable, Licensee shall be entitled to provide TDSF with written notice of such failure to communicate a response and, if Licensee provides such written notice and TDSF fails to communicate its approval or disapproval of the applicable submission within two (2) Business Days following such written notice from Licensee, then such failure shall be deemed an "**In Store Response Failure**"; provided, that there shall not under any circumstances be deemed to be more than one (1) In Store Response Failure with respect to any particular submission of Chain Wide In Store Materials, notwithstanding any further failure by TDSF to respond thereto. Within twenty (20) Business Days following the end of each half (1/2) of each Contract Year, TDSF shall pay to Licensee an amount (if positive and if any) equal to (I)(A) the number of In Store Response Failures occurring during the immediately preceding six (6) Retail Months of such Contract Year minus fifteen percent (15%) of the number of submissions

by Licensee to TDSF of Chain Wide In Store Materials during such six (6) Retail Month period of such Contract Year, multiplied by (B) Five Hundred Dollars ($500), minus (II) Five Hundred Dollars ($500) (such amount, the "**In Store Response Failure Fee**"), by wire transfer to an account designated by Licensee in writing; provided, that, if during any Retail Month of the applicable six (6) Retail Month period the total number of submissions of In Store Materials (x) exceeds thirty (30) but is less than or equal to forty (40), then the number in the preceding subparagraph (I)(B) shall be reduced from Five Hundred Dollars ($500) to Two Hundred Fifty Dollars ($250), or (y) exceeds forty (40), then the number in the preceding subparagraph (I)(B) shall be reduced from Five Hundred Dollars ($500) to Zero Dollars ($0). Notwithstanding anything to the contrary contained herein, other than referral of repetitive In Store Response Failures to the Joint Advisory Committee pursuant to Section 8.3.6, the In Store Response Failure Fee shall be Licensee's sole and exclusive remedy for any and all In Store Response Failures and Licensee shall have no other recourse or remedy nor be entitled to any abatement or reduction of any payments or other obligations hereunder on account of any such In Store Response Failures. For purposes of clarification, with respect to submissions of any In Store Materials or Chain Wide In Store Materials contemplated by this Section 5.2.2(b), each Template and/or item contained in each such submission shall be counted as a separate submission, even if submitted concurrently with other In Store Materials or Chain Wide In Store Materials in the same package of Marketing Materials, provided, that multiple sizes of an item with the same content (e.g., a single advertisement in the form of a point-of-sale card, a shelf display and a window display, all in varying sizes) shall be treated as one item and one submission. In addition, at the time of its submission of Chain Wide In Store Materials, Licensee shall so designate such submission, which designation (or lack thereof) shall be binding on Licensee, although TDSF shall be entitled to dispute any such designation in its sole discretion.

(c) Notwithstanding anything to the contrary contained in subparagraph (a) of this Section 5.2.2, in any case where Licensee has re-submitted materials that were previously approved or disapproved by TDSF under this Section 5.2.2 and were subject to only minor revisions or refinements, TDSF shall respond to (i.e., approve or disapprove) such re-submission within five (5) Business Days following Licensee's submission of such revisions or refinements. In addition, during each Monday-through-Friday period during the Term, TDSF shall, upon Licensee's request, use its commercially reasonable efforts to respond to (i.e., approve or disapprove) up to five (5) submissions of In Store Materials within two (2) Business Days. TDSF agrees that it shall not exercise its approval rights as described under this Section 5.2.2 so as to preclude Licensee from providing any disclosures required by any applicable Law.

5.2.3 Final Proofs. If FF&E Materials or Marketing Materials and, as applicable, the Promotional Brief are approved by TDSF under Section 5.2.2, at or before the time they are to be used for general use in the Facilities or the Internet Store or general distribution to the public, (i) if applicable, TDSF and Licensee shall each duly execute the Promotional Brief, which shall be binding upon such parties, and (ii) Licensee shall furnish to TDSF final proofs, scripts, architectural renderings, designs, webpages, samples or versions of all such materials (including any Non-Conforming Approved Template, Minor Revision Approved Template and, for informational purposes only, Conforming Approved Template), indicating the specific use to which they will be put (including, if applicable, the media or channels through which and the period of time during which such materials will be distributed or displayed), which final proofs, scripts, architectural renderings, designs, webpages, samples and versions shall not differ in any respect from the proposals or prototypes previously preliminarily approved by TDSF (other than immaterial variations that are not related to any Disney Property in any manner whatsoever).

5.2.4 Final Approval. Any final submission under Section 5.2.3 for which TDSF has granted a preliminary approval pursuant to Section 5.2.2, which final submission does not differ in any respect from the proposals or prototypes previously preliminarily approved by TDSF (other than immaterial variations that are not related to any Disney Property in any manner whatsoever), shall be deemed approved, provided, that TDSF shall be entitled, at any time within ten (10) Business Days following Licensee’s submission of such materials, to disapprove any such materials if (i) TDSF finds any of such final proofs, scripts, architectural renderings, designs, webpages, samples or versions or the specific use to which they will be put (including, if applicable, the media or channels through which or the period of time during which such materials will be distributed or displayed) different in any manner whatsoever from the proposals or prototypes previously preliminarily approved (other than immaterial variations that are not related to any Disney Property in any manner whatsoever), (ii) any (a) alleged or actual copyright and/or trademark infringement or other Disney IP Claim or any other legal consideration or rights dispute regarding any intellectual property or (b) corporate brand considerations, including without limitation, protection of the "Disney" brand, name, reputation and quality shall, in TDSF’s sole discretion, require the temporary postponement (or, if necessary, revocation) of any previous preliminary approval (provided, that in the case of a revocation pursuant to this subparagraph (ii), TDSF shall reimburse Licensee for its actual, reasonable out-of-pocket costs and expenses incurred in connection with the item subject to such revocation from the date the preliminary approval thereof was granted up to the date such notice of revocation was given by TDSF to Licensee), or (iii) TDSF determines that Licensee has failed to comply with any term or condition of the Promotional Brief related to the Licensed Materials or any other material term or condition of the Promotional Brief (if applicable), by providing written notice to Licensee of such disapproval, which notice shall identify the circumstances set forth in the preceding subparagraphs (i) through (iii) that have resulted in such disapproval. In the case of any such disapproval, Licensee shall, as soon as practicable after such notice is given by TDSF, cause the modification or withholding of such materials or cure the default under the Promotional Brief, as the case may be.

5.2.5 Print, Radio and Television. Licensee shall obtain all necessary approvals for all print, radio and television marketing, advertising and promotional materials that TDSF has approved in accordance with this Section 5.2, and shall ensure that all such marketing, advertising and promotional materials comply with all applicable Laws.

5.2.6 FF&E Materials. Licensee shall obtain all necessary approvals (including all necessary landlord approvals) for all FF&E Materials that TDSF has approved in accordance with this Section 5.2, and shall ensure that all such FF&E Materials comply with all applicable Laws, including, without limitation, any applicable zoning or land use ordinances.

5.2.7 Promotional Brief. The parties agree that the execution of a Promotional Brief is not a prerequisite to the development and creative approval process for any promotion hereunder; provided, that execution by the parties of a Promotional Brief is a prerequisite to the commencement, conduct or public performance of any promotion identified in subparagraph (iii) of Section 5.2.1. All such promotions shall be subject to the terms of this Agreement and the applicable Promotional Brief.

5.2.8 **.

---

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

5.3 General Terms Applicable to TDSF Approval of All Licensed Materials. Notwithstanding anything contained herein to the contrary, with respect to all submissions by Licensee under this Section 5, whether consisting of submissions pertaining to Disney Merchandise, FF&E Materials or Marketing Materials, Licensee acknowledges and agrees that: (i) the approval or disapproval of any such submission shall be at TDSF's sole discretion; (ii) if any submission is disapproved by TDSF, where the proposed use of the Disney Properties by Licensee would be permissible in accordance with the terms of this Agreement if modified, TDSF shall, to the extent feasible (and in any event with respect to a substantial number of submissions), propose in writing alternative suggestions and recommendations with respect thereto for the purpose of providing Licensee an opportunity to correct such submission and re-submit it to TDSF; (iii) except as otherwise provided with respect to final, conforming submissions in Section 5.1.2(a) and Section 5.2.4, any submission not receiving the specific written approval of TDSF shall be deemed disapproved and unlicensed; (iv) no failure of TDSF to respond within a specified time period shall be deemed a breach of or default under this Agreement by TDSF under any circumstances, including, without limitation, any circumstance under which TDSF is obligated to pay any Response Failure Fee or any In Store Response Failure Fee; (v) any submission receiving approval by TDSF will not constitute or imply a representation or belief by TDSF that such submission complies with any applicable Laws and/or other policies issued by any Governmental Entity, which compliance shall be the sole responsibility of Licensee, and, in connection therewith, Licensee shall, at its sole cost and expense, obtain any required consents, approvals, permits, licenses or other authorizations that may be required by any Governmental Entity or applicable Law; (vi) any approval by TDSF of a submission may be expressed in an informal written manner, such as by way of a Representative of TDSF placing his or her signature and the word "approved" directly upon the proposed submission or by a Representative of TDSF providing written approval via electronic mail or fax; and (vii) at any time during the Term, TDSF shall have the right, in its sole discretion, by written notice to Licensee, to modify or revoke its approval of any use of Licensed Materials in accordance with this Section 5, provided, that such notification shall advise Licensee of the nature of the changes required or the reasons for the revocation and shall be subject to the terms of Section 4.9 (including the reimbursement provisions set forth in such Section as if such notification were a Withdrawal Determination).

5.4 Unique Nature of Agreement. Licensee acknowledges and agrees that TDSF and its Affiliates place the utmost importance on the conservation and protection of the Disney Properties, the Licensed Materials, and all other names, brands, trademarks, logos, symbols, characters and other propriety designations and intellectual property of TDSF and its Affiliates. TDSF entered into the transactions contemplated by this Agreement only after a careful and methodical process pursuant to which TDSF selected TCP, Licensee Parent and Canadian Parent to be the indirect and direct owners of Licensee, which is the sole licensee hereunder, from among a wide range of other potential candidates. TDSF assessed that Licensee, being owned by TCP, Licensee Parent and Canadian Parent, was uniquely well qualified to perform the obligations of the licensee under this Agreement and imposed upon Licensee the specific, highly customized terms, conditions and procedures set forth herein, which are specifically tailored to provide the highest level of protection for the Disney Properties and Licensed Materials. Such terms, conditions and procedures include, among other things, (i) TDSF's right to approve each and every Licensee use of the Disney Properties and Licensed Materials in TDSF's sole discretion, as well as other related approval rights, (ii) the right of TDSF, without limiting its other rights and remedies, to seek equitable relief in a court of law in the case of a Licensee Infringing Use or other Licensee breach of this Agreement, (iii) the right of TDSF to cure breaches and other forms of non-compliance of Licensee with funds made available by Licensee in accordance with Section 9.10, (iv) the fact that the limitation on liability of the parties pursuant to Section 21.22 does not apply to Licensee's misuse of the Disney Properties or Licensed Materials, (v) the right of TDSF to terminate this Agreement if Licensee attempts certain prohibited assignments of this Agreement or if certain change of control transactions occur, and (vi) the rights of TDSF and the obligations of TCP and Licensee Parent arising under the TCP Guaranty and Commitment. Licensee acknowledges and agrees that, if Licensee had not been the other party to this Agreement or had not been acquired by TCP, Licensee Parent and Canadian Parent pursuant to the Acquisition Agreement or had not agreed to the specific, carefully tailored terms, conditions and procedures set forth herein, TDSF would not have agreed to enter into this Agreement.

5.5 Quality Control. In connection with its use of the Licensed Materials, Licensee shall at all times maintain a level of quality that is consistent with those maintained by TDSF and its Affiliates with respect to the respective Disney Properties incorporated therein and with the quality levels prevailing among full-priced specialty retail chains focused on children's consumer products. TDSF shall from time to time inspect (provided that it shall endeavor to provide at least three (3) Business Days notice of such inspection) Licensee's operations to ensure Licensee's compliance with the foregoing quality control standards, and Licensee shall make available the Business Properties, copies of all webpages from the Internet Store, Licensee's books and records, and its management and employees to assist TDSF with such inspection in accordance with Section 9.10.1. Any failure to comply with such quality control standards by Licensee shall be deemed a Material Breach by Licensee.

5.6 Other Limitations. Licensee shall not, under any circumstances, use any Disney Properties or Licensed Materials for the design, development, production, manufacture, distribution, sale or use of any Disney Merchandise, FF&E Materials or Marketing Materials that are or may be harmful to or may impair the prestige, good name and reputation and/or goodwill of the Disney Properties, the Licensed Materials, or any other name, brand, trademark, logo, symbol, character or other proprietary designation or

intellectual property of TDSF and/or its Affiliates. Without limiting the generality of the foregoing restriction, any use of any Disney Property in connection with any of the following is expressly prohibited:

(a) Disney Merchandise or other Licensed Materials that are harmful to children or potentially detrimental to their characters, including, without limitation, tobacco products and accessories, alcoholic beverages (including beer and wine) and accessories, and gambling devices;

(b) products not manufactured in compliance with the requirements of the Code;

(c) medicines, vitamins, herbs, nutritional supplements and drugs (whether prescription, over-the-counter or otherwise);

(d) personal hygiene products (but not including generic personal care products such as paper handkerchiefs, toothbrushes, soaps, cosmetics, nail polish and shampoo) and toilet articles for men or women;

(e) any comic material or character not owned by or licensed to TDSF or any of its Affiliates; and

(f) any Disney Merchandise or other Licensed Materials that publicize or promote any motion picture, television program, internet site, interactive game, or other consumer product or service, if such motion picture, television program, internet site, interactive game, or other consumer product or service is not (i) a Disney Property or owned by or licensed to TDSF or any of its Affiliates and (ii) approved for use hereunder in writing by TDSF.

5.7 Exceptions. The following shall be deemed to have been approved by TDSF under this Section 5 as of the Effective Date: (i) any pre-production sample or production sample of any Article of Disney Merchandise that, as of the Effective Date, has been completed, (ii) any FF&E Materials existing at, in transit to, or on order for the Facilities as of the Effective Date, (iii) any Marketing Materials that have been printed or produced in final form as of the Effective Date or for which a purchase order has been issued as of the Effective Date, or (iv) any Article of the type described in the last sentence of the definition of "Disney Merchandise."

5.8 Business Stationery and Related Materials. Licensee shall be authorized to use the name *"Disney Store"* in connection with Licensee's business cards, stationery, letterhead paper, purchase orders and other comparable paper instruments used to identify Licensee, provided that (i) in each such case Licensee's corporate name (e.g., "Hoop Retail Stores, LLC", the proposed name of the successor upon merger of TDS USA) shall also be displayed in a prominent manner to avoid confusion between the Facilities and Licensee, on the one hand, and TDSF and its Affiliates, on the other hand, and (ii) the size, style, design and all other elements and components of each such use of the *"Disney Store"* name (including, without limitation, the manner in which Licensee's corporate name is used in connection therewith) shall be subject to the final approval of TDSF in its sole discretion. Notwithstanding anything to the contrary contained in this Agreement, except for the use of the *"Disney Store"* name in the manner contemplated by the preceding sentence, Licensee acknowledges and agrees that it shall not be entitled to use any other Disney Properties or Licensed Materials on any of Licensee's or its Affiliates' business cards, stationery, letterhead paper, purchase orders or other comparable instruments used to identify Licensee or its Affiliates, whether in paper, electronic or other form.

6. PRESERVATION OF PROMOTIONAL VALUE.

6.1 Preservation of Licensee's Promotional Value. During the Term and within the Territory, subject to the provisions set forth below in this Section 6.1 and Section 6.2 and except as otherwise specifically provided under the terms of this Agreement, neither TDSF nor any of its Affiliates shall, nor shall TDSF or any of its Affiliates authorize any third party to:

(A) **;

---

** *This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

(B) use (i) the name "*Disney Store*" or any other name that includes the words "*Disney Store*" (other than in connection with the Facilities as operated by Licensee) or (ii) in connection with the offer or sale of Softlines and/or Toys/Plush through physical (not "virtual" or online) retail stores that are operated on either a stand-alone basis or in a Store-Within-a-Store Format, any other Restricted Name; or

(C) following the Internet Start Date, use any of the TDS Internet Domains other than in connection with the Internet Store.

Notwithstanding the foregoing or any other provision contained in this Agreement to the contrary, Licensee acknowledges and agrees that nothing contained in this Agreement, including, without limitation, the preceding subparagraphs of this Section 6.1, shall be deemed to limit, restrict or otherwise apply in any manner whatsoever to any of the following activities, each of which shall be deemed to be a business, operation or activity in which TDSF and/or any of its Affiliates shall be entitled to participate, directly or indirectly through or with one (1) or more unrelated third parties, without any restriction or limitation whatsoever:

6.1.1 Flagship Stores, Designated WDW Stores and El Capitan. TDSF and its Affiliates shall be entitled to, and to authorize any unrelated third party to, own, lease, license, control, maintain, manage, staff, supply, administer, market, advertise, promote and otherwise operate (including, without limitation, the right to create, manufacture, cause the manufacture of, source,

distribute, offer for sale, and sell consumer products bearing, featuring or incorporating one (1) or more Disney Properties for and in such locations), in such manner and for such period of time as TDSF and/or any of its Affiliates shall elect in their sole discretion, (a) the "flagship" and studio stores operating under the *"Disney Store"* name existing as of the Effective Date and located at (i) 711 Fifth Avenue, New York, New York and (ii) 500 South Buena Vista Street, Burbank, California (Disney Studio Lot) (collectively, the **"TDSF Flagship Stores"**), (b) the stores related to WALT DISNEY WORLD Resort existing as of the Effective Date and located at (i) the Ocala Welcome Center, (ii) 3200 International Drive, Kissimmee, Florida (Gaylord Palms Hotel), and (iii) 9101 International Drive, Suite 1212, Orlando, Florida (Disney World Port) (collectively, the **"Designated WDW Stores"**), and (c) the Disney Retained Store located within the El Capitan; provided, that (x) except in the case of the TDSF Flagship Store located in Burbank, California described in the preceding subparagraph (a)(ii), no such TDSF Flagship Store or Designated WDW Store shall be operated under any Restricted Name and (y) the parties acknowledge that the *"Disney Store"* located within the El Capitan will be operated by Licensee as a Disney Retained Store under the *"Disney Store"* name until such time as TDSF shall designate in its sole discretion for its closure, at which time an alternative retail location, operated under a name other than *"Disney Store"* and located within the El Capitan, may be operated by TDSF or its Affiliates or its third party designee (other than Licensee) for so long as TDSF or its Affiliates may determine in their sole discretion as if it were a TDSF Flagship Store under this Section 6.1.1.

6.1.2 Disney Retained Stores. TDSF and its Affiliates shall be entitled to, and to authorize any unrelated third party (including, without limitation, Licensee) to, own, lease, license, control, maintain, manage, staff, supply, administer, market, advertise, promote and otherwise operate (including, without limitation, the right to create, manufacture, cause the manufacture of, source, distribute, offer for sale, and sell consumer products bearing, featuring or incorporating one (1) or more Disney Properties for and in such locations), in such manner (including, without limitation, under any Restricted Name) as TDSF and/or any of its Affiliates shall elect in their sole discretion, each of the Disney Retained Stores (other than the TDSF Flagship Stores, which are covered by Section 6.1.1, and other than the alternative retail location operated within the El Capitan as contemplated by subparagraph (y) of Section 6.1.1 after the closure of the Disney Retained Store located therein) until such time as the lease for each such Disney Retained Store existing as of the Effective Date has expired or has been terminated in a manner acceptable to TDSF and/or its Affiliates in their sole discretion or the operations of such Disney Retained Stores have otherwise been terminated in a manner acceptable to TDSF and/or its Affiliates in their sole discretion (and provided, that, at the direction of TDSF and/or its Affiliates, Licensee shall conduct the closure of any such Disney Retained Stores operated by Licensee in a commercially reasonable time and manner, in accordance with any applicable agreements between TDSF, Licensee and/or their respective Affiliates with respect to the operation of such Disney Retained Stores and in accordance with such reasonable instructions as TDSF and/or its Affiliates shall specify).

6.1.3 Other Disney Retail Stores. TDSF and its Affiliates shall be entitled to, and to authorize any unrelated third party to, own, lease, license, control, maintain, manage, staff, supply, administer, market, advertise, promote and otherwise operate (including, without limitation, the right to create, manufacture, cause the manufacture of, source, distribute, offer for sale, and sell consumer products bearing, featuring or incorporating one (1) or more Disney Properties for and in such locations), in such manner (including, without limitation, under any Restricted Name) and for such period of time as TDSF and/or any of its Affiliates shall elect in their sole discretion, retail stores that are (i) located within any Theme Park owned, leased, licensed, controlled and/or operated by or on behalf of TDSF and/or any of its Affiliates, including, without limitation, WALT DISNEY WORLD Resort and DISNEYLAND Resort, (ii) located within a five (5) mile radius of any Theme Park (including, without limitation, WALT DISNEY WORLD Resort) owned, leased, licensed, controlled and/or operated by or on behalf of TDSF and/or any of its Affiliates, except that, with respect to DISNEYLAND Resort and any Theme Park owned, leased, licensed, controlled and/or operated by or on behalf of TDSF and/or any of its Affiliates that is located in a major metropolitan area and first opened to the public after the Effective Date, such radius shall be limited to two and one-half (2½) miles, (iii) located within any airport located in or near the same city as any Theme Park owned, leased, licensed, controlled and/or operated by or on behalf of TDSF and/or any of its Affiliates, including, without limitation, WALT DISNEY WORLD Resort and DISNEYLAND Resort, (iv) located within, on the grounds of, adjacent to or within one thousand (1,000) feet of any hotel, motel, condominium, Disney Vacation Club or other time-share style accommodations (including, without limitation, the Disney Vacation Clubs operated as of the Effective Date in Hilton Head, South Carolina and Vero Beach, Florida) or comparable lodging establishment owned, leased, licensed, controlled and/or operated by or on behalf of TDSF and/or any of its Affiliates, or (v) located within any other location that is owned, leased, licensed, controlled and/or operated by or on behalf of TDSF and/or any of its Affiliates that is not primarily focused on retail sales of consumer products but that may contain one (1) or more retail locations at which consumer products bearing, featuring or incorporating one (1) or more of the Disney Properties may be offered for sale (by way of illustration and without limitation, the New Amsterdam Theater in New York City; cruise ships of and port terminals for the Disney Cruise Line; or a Disney-themed mixed-use family amusement center that features Disney-themed rides, games, restaurants, theaters, children’s clubs and, as one component thereof, retail stores).

6.1.4 Outlet Stores. TDSF and its Affiliates shall be entitled to, and to authorize any unrelated third party to, own, lease, license, control, maintain, manage, staff, supply, administer, market, advertise, promote and otherwise operate (including, without limitation, the right to create, manufacture, cause the manufacture of, source, distribute, offer for sale, and sell consumer products bearing, featuring or incorporating one (1) or more Disney Properties for and in such locations), in such manner (including, without limitation, under any Restricted Name other than any name that includes the words *"Disney Store"*) and for such period of time as TDSF and/or any of its Affiliates shall elect in their sole discretion, up to twenty-five (25) Outlet Stores within the Territory, a material purpose of which is liquidating inventories of consumer products bearing, featuring or incorporating one (1) or more of the Disney Properties; provided, that, following the Effective Date, if TDSF and its Affiliates elect to open a new Outlet Store, the location thereof shall not, as of the date on which the site of such Outlet Store is identified to Licensee by written notice from TDSF, be within a five (5) mile radius of any then existing Facility.

6.1.5 Direct-to-Consumer. TDSF and its Affiliates shall be entitled to, and to authorize any unrelated third party to, own, lease, license, control, maintain, manage, staff, supply, administer, market, advertise, promote and otherwise operate (including, without limitation, the right to create, manufacture, cause the manufacture of, source, distribute, offer for sale, and sell consumer products bearing, featuring or incorporating one (1) or more Disney Properties for and through such means), in such manner (including, without limitation, under any Restricted Name other than any name that includes the words *"Disney Store"*) and for such period of time as TDSF and/or any of its Affiliates shall elect in their sole discretion, any direct-to-consumer retail business, including, without limitation, (i) any mail or telephone order retail business, (ii) any online, electronic, "virtual" or paper catalog business, including the existing "Disney Catalog" business owned and operated by Affiliates of TDSF, and (iii) any Internet, online, electronic or "virtual" business, including the existing Internet business owned and operated by Affiliates of TDSF located at www.disneycatalog.com, notwithstanding the fact that any such business of TDSF or its Affiliates may be directly competitive with the Internet Store operated by Licensee, provided, that, following the Internet Start Date, TDSF and its Affiliates shall not use, or authorize any unrelated third party to use, any of the TDS Internet Domains in the operation of any such Internet, online, electronic or "virtual" business, but provided further, that TDSF and its Affiliates shall be permitted in connection therewith to use other Internet domain names that incorporate the name "Disney" or any Disney Property other than the name *"Disney Store"* (e.g., www.disneycatalog.com or any Restricted Name other than *"Disney Store"*) (such direct-to-consumer retail businesses operated by TDSF and its Affiliates, including those described in the preceding subparagraphs (i), (ii) and (iii), the **"DDM Business"**) . For purposes of clarification, Licensee acknowledges and agrees that, prior to the Internet Start Date, TDSF or its Affiliates shall continue to operate the Internet retail business located at www.disneystore.com and conducted by TDSF and its Affiliates as of the date of the Acquisition Agreement, such operation to be conducted by and through the TDS Internet Domains until the Internet Start Date.

6.1.6 Temporary Liquidation Stores. TDSF and its Affiliates shall be entitled to, and to authorize any unrelated third party to, own, lease, license, control, maintain, manage, staff, supply, administer, market, advertise, promote and otherwise operate (including, without limitation, the right to source, distribute, offer for sale, and sell consumer products bearing, featuring or incorporating one (1) or more Disney Properties for and in such locations), in such manner (including, without limitation, under any Restricted Name other than any name that includes the words *"Disney Store"*) and at such times as TDSF and/or any of its Affiliates shall elect in their sole discretion, up to twenty (20) Temporary Liquidation Stores within the Territory per Contract Year; provided that (i) a material purpose of such Temporary Liquidation Stores shall be liquidating inventories of consumer products bearing, featuring or incorporating one (1) or more of the Disney Properties and (ii) the location of any such Temporary Liquidation Store opened after the Effective Date shall not, as of the date on which the site of such Temporary Liquidation Store is identified to Licensee by written notice from TDSF, be within a five (5) mile radius of any existing Store Facility or, if such Temporary Liquidation Store is located within a twenty (20) mile radius of any Theme Park of TDSF or its Affiliates, then within a two (2) mile radius of any existing Store Facility.

6.1.7 Existing Authorizations to Use Restricted Names. Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, subparagraph (B) of Section 6.1, any Contract existing as of the Effective Date that authorizes any Person to use any Restricted Name (an **"Existing Restricted Name Agreement"**), including, without limitation, any Contract set forth on Schedule 6.1.7, shall not be prohibited by this Agreement, provided, that, following the Effective Date, unless such use is permitted by any of the provisions of this Agreement (including, without limitation, Section 6.1.1, 6.1.2, 6.1.3, 6.1.4, 6.1.5 or 6.1.6), any such authorization shall not be extended or renewed following the expiration date thereof as provided under the terms of any such Contract (unless such extension or renewal is automatic under, or otherwise required or permitted (including, without limitation, upon the exercise of any option or right to renew or extend for any specified period(s) of time) by, the terms of such Contract). For purposes of clarification, the Contracts set forth on Schedule 6.1.7 reflect TDSF's good faith efforts to identify all Existing Restricted Name Agreements as of the Effective Date, but Schedule 6.1.7 shall not be deemed to be an exhaustive list of all such Contracts and neither the omission of any such Contract from such Schedule 6.1.7 nor the use of any Restricted Name by any Person pursuant to any such Contract that is not set forth on such Schedule 6.1.7 shall be or be deemed to be a breach by TDSF of Section 6.1 or any other provision of this Agreement, and no representation or warranty is made or deemed to be made hereby with respect to the completeness or accuracy of Schedule 6.1.7.

6.2 Other Channels of Distribution Not Limited. For purposes of clarification, Licensee acknowledges and agrees that, except and only to the extent specifically set forth in Section 6.1, notwithstanding anything to the contrary contained in this Agreement, nothing contained in this Agreement shall, nor shall it be deemed to, limit, restrict or otherwise prohibit in any manner whatsoever TDSF and/or any of its Affiliates (or any unrelated third party authorized or permitted by TDSF and/or any of its Affiliates) from creating, manufacturing, causing the manufacture of, sourcing, distributing, offering for sale and selling consumer products that bear, feature or incorporate one (1) or more of the Disney Properties through or into or by way of any channel of distribution (whether existing as of the Effective Date or developed thereafter), including, without limitation, the unlimited right of TDSF and/or its Affiliates (or any unrelated third party authorized or permitted by TDSF and/or any of its Affiliates) to (i) offer for sale and sell such consumer products that bear, feature or incorporate one (1) or more of the Disney Properties through mass merchandisers (e.g., Wal-Mart, Target, K-Mart, Costco, Sam's Club), department stores (e.g., Sears, JC Penney, Macy's Bloomingdale's, Nordstrom), specialty retail stores (e.g., Gap, Gymboree, The Limited), toy stores (e.g., Toys "R" Us, KB Toys), "five & dime" style stores (e.g., Woolworth's), drug stores (e.g., Walgreens, Rite-Aid), and individual or "mom & pop" type stores, in each case including, without limitation, in a Store-Within-a-Store Format, and/or (ii) grant a DTR License for any or all Disney Properties to any such mass merchandiser, department store, specialty retail store, toy store, "five & dime" store, drug store or "mom & pop" store or any other Person enabling such retailer or other Person to create, manufacture, cause the manufacture of, source, distribute, offer for sale and sell consumer products that bear, feature or incorporate one (1) or more of the Disney Properties through their respective channel(s) of distribution, subject only to the following:

6.2.1 **;

_____

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

6.2.2 In addition to the provisions of Section 6.2.1, TDSF's and its Affiliates' right to grant one (1) or more DTR Licenses with respect to any and all categories of consumer products to one (1) or more chains of Specialty Retail Stores shall be subject to the following limitations:

(a) During the Term, (i) at least fourteen (14) Business Days prior to granting or voluntarily renewing any DTR License authorizing one (1) or more Property-Product Combinations to a chain of Specialty Retail Stores, TDSF or any such Affiliate shall provide to Licensee written notice of its desire to so grant or voluntarily renew such DTR License (the "**DTR Notice**"), which DTR Notice shall set forth (x) the approximate proposed initial term and renewal term(s), if any, of such DTR License and only such additional material non-economic, non-financial terms or information of such DTR License as are necessary to enable Licensee to perform the calculations required pursuant to this Section 6.2.2(a) (without any requirement to identify by name the entity potentially entering into such DTR License) and (y) **, and (ii) **, provided, that (xx) the preceding subparagraphs (i) and (ii) of this Section 6.2.2(a) shall apply only in the case of any such voluntary renewal following the expiration date of the applicable DTR License as provided under the terms thereof and shall not under any circumstances apply in the case of any such renewal that is automatic under, or otherwise required or permitted (including, without limitation, upon the exercise of any option or right to renew or extend for any specified period(s) of time) by, the terms of such DTR License and (yy) for purposes of clarification, (1) if any such DTR License to be granted by TDSF or its Affiliates to a chain of Specialty Retail Stores does not provide for a license with respect to any of the DTR Product Categories or (2) if any such DTR License to be granted by TDSF or its Affiliates to a chain of Specialty Retail Stores does not provide for a license with respect to any of the Character Properties, then in either such case the provisions of this Section 6.2.2(a) shall not be applicable to such DTR License nor limit, restrict or otherwise prohibit such DTR License in any manner whatsoever;

_____

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

(b) **;

(c) **; and

(d) **;

_____

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

6.2.3 In addition to the provisions of Section 6.2.1, TDSF's and its Affiliates' right to grant one (1) or more DTR Licenses with respect to any and all categories of consumer products to one (1) or more Mass Merchandisers shall be subject to the following limitations: **; and

_____

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

6.2.4 For purposes of clarification, the limitations set forth in the preceding Sections 6.2.2 and 6.2.3 shall not, under any circumstances, apply to or be deemed to apply to (i) any Non-Disney-Branded Properties; **.

_____

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

6.3 Preservation of TDSF's Promotional Value. Without the prior written consent of TDSF, during the Term and throughout the world, except as contemplated by this Agreement, Licensee shall not, nor shall it permit or authorize TCP, Licensee Parent, Canadian Parent or any of their Affiliates or any unrelated third party on its or their behalf to, (i) offer for sale or sell Disney Merchandise or any other consumer products or services bearing, featuring or incorporating one (1) or more of the Disney Properties or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property that are owned, licensed or otherwise controlled by TDSF and/or its Affiliates by or through any venue, methodology, channel of distribution or other means (including, without limitation, by or through catalogs, mail order, telephone order (other than incidental telephone sales conducted in connection with the customer service operations of the Internet Store) or other comparable direct-to-consumer channels of distribution) or otherwise exercise any of Licensee's rights or benefits under this Agreement other than (a) by and through the Facilities and the Internet Store in the manner specifically contemplated by and approved by TDSF under this Agreement, (b) to TDSF, its Affiliates and Other Disney Store Operators, or (c) in the case of inventories of excess, discontinued or obsolete Disney Merchandise or slightly irregular Softlines of Disney Merchandise (e.g., imperfect color, stitching, sizing), to unrelated third parties engaged in the business of liquidating excess inventory **("Liquidators")**, provided, that the aggregate Original Retail Price of all Disney Merchandise sold to Liquidators during the Stub Period or any Contract Year shall not exceed three percent (3%) of Net Retail Sales for the Stub Period or such Contract Year, respectively, or (ii) own, lease, license, control, maintain, manage, staff, supply, administer, market, advertise, promote or otherwise operate or assist in the operation of any other specialty retail store or stores that are primarily focused on the offer to sell or sale of consumer products or services that feature one (1) or more character-based or character-themed properties, including, without limitation, properties consisting of names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property that are generally known to the public as being associated with (a) any Theme Parks, (b) any animated motion pictures, television programs, home

videos and/or other similar forms of media, (c) children-oriented theatrical productions and publishing properties, and/or (d) other comparable entertainment properties, provided, that any specialty retail store that is owned or leased and controlled and operated by TCP or its Affiliates (other than Licensee Parent, Licensee, Canadian Parent and their respective Subsidiaries) shall be permitted to offer for sale and sell consumer products or merchandise that feature one (1) or more character-based or character-themed properties that are owned solely, exclusively and directly by TCP or its Affiliates (other than Licensee Parent, Licensee, Canadian Parent and their respective Subsidiaries) (such properties, the **"TCP Characters"**) so long as such consumer products or merchandise featuring such TCP Characters are offered in no more than fifteen percent (15%) of any such specialty retail store's Public Merchandising Space (provided that such fifteen percent (15%) restriction shall not apply to any such consumer products or merchandise if the respective TCP Character has been adopted as TCP's official logo or mark and is featured on substantially all of the consumer products and merchandise offered at all such specialty retail stores).

6.4 Right of First Negotiation With Respect to NDB Stores. In the event that, during the Term and within the Territory, TDSF and/or any of its Affiliates elect, in their sole discretion, to operate or engage a third party to operate any NDB Store, then TDSF shall provide Licensee with written notice thereof, and if Licensee provides written notice within five (5) Business Days of Licensee's receipt of TDSF's written notice of Licensee's desire to negotiate with TDSF or its Affiliates in good faith, thereafter TDSF shall negotiate with Licensee in good faith and exclusively, for a period of two (2) months following TDSF's written notice to Licensee, regarding the terms and conditions upon which, and the separate consideration for which, TDSF would engage Licensee to be the operator of the NDB Stores within the Territory. Each of TDSF and Licensee shall be entitled to decide whether to enter into any such agreement or arrangements in its sole discretion and may terminate such discussions at the end of such two (2) month period without recourse or remedy by the other party and without any abatement or reduction of any payments or other obligations hereunder. Any agreement reached under this Section 6.4 shall be memorialized in a separate written agreement. In the event that Licensee declines TDSF's invitation to negotiate (or fails to respond to it within five (5) Business Days following TDSF's written notice) or the parties fail to enter into a definitive written agreement within such two (2) month period, then TDSF and/or any of its Affiliates shall be entitled to operate, and/or negotiate and enter into any agreement on any terms and conditions whatsoever with any other Person, including any Person who competes directly or indirectly with Licensee or its Affiliates, to be the operator of, the NDB Stores within the Territory, without recourse or remedy by Licensee and without any abatement or reduction of any payments or other obligations of Licensee hereunder. Notwithstanding anything to the contrary contained in this Agreement, this Section 6.4 shall not apply to any NDB Store pertaining to or operated under any name, brand, trademark, logo, symbol or other proprietary designation of Miramax, as to which Licensee shall have no rights hereunder and as to which there shall be no restrictions under this Agreement.

7. ROYALTIES.

7.1 Payments.

7.1.1 Monthly Royalties. In consideration of the rights, benefits and privileges granted to Licensee by TDSF under this Agreement, except as set forth in Section 7.1.2 and Section 7.1.3 and subject to Section 7.6, Licensee shall pay to TDSF, on or before the seventh ($7_{th}$) Business Day of each Retail Month during the Term in respect of the preceding Retail Month of the Term, an amount equal to (I) five percent (5%) of (A) all Net Retail Sales generated in the Facilities during the Retail Month immediately preceding the Retail Month of payment and (B) all sales of Disney Merchandise to Liquidators pursuant to Section 6.3(i)(c) during the Retail Month immediately preceding the Retail Month of payment (collectively, the **"Monthly Facilities Royalty Amount"**) plus (II) (i) for one (1) year following the Internet Start Date, five percent (5%) of all Net Retail Sales generated through the Internet Store during the Retail Month immediately preceding the Retail Month of payment or (ii) following the first ($1_{st}$) anniversary of the Internet Start Date, either (a) nine percent (9%) of all Net Retail Sales generated through the Internet Store or (b) for any period during which TDSF or any of its Affiliates provides the Hyperlink as described in subparagraph (vii) of Section 9.3.2(b), ten percent (10%) of all Net Retail Sales generated through the Internet Store, which Net Retail Sales, in the case of the preceding subparagraphs (ii)(a) and (ii)(b), were generated through the Internet Store during the Retail Month immediately preceding the Retail Month of payment (each, the **"Monthly Internet Store Royalty Amount"**). For purposes of this Agreement, **"Net Retail Sales"** shall mean the aggregate amount of all revenues generated from all sales of goods, products, merchandise, services or other items of any kind in the Facilities or the Internet Store (including, without limitation, any sales through any New Sales Medium without regard to the method by which Licensee is compensated for sales through any such New Sales Medium and the amount of all sales generated when Disney Dollars and/or Gift Cards are used as a method of payment or otherwise redeemed in the Facilities or, with respect to Gift Cards, the Internet Store, including through any New Sales Medium, without reduction for any Stored Value Card Fee), excluding only (1) revenues generated and commissions retained by Licensee from the sale of any Theme Park Admission Passes in accordance with Section 9.9.1 and Schedule 9.9.1 (which Theme Park Admission Passes shall only be available through the Facilities and not the Internet Store), (2) revenues generated from the sale of Disney Dollars (which shall only be available for sale in the Facilities and not through the Internet Store) and Gift Cards (in the case of Disney Dollars and Gift Cards, as opposed to the use thereof as a method of payment) and the sale of theater tickets for theatrical productions owned and produced by TDSF or its Affiliates, (3) the amount of any product returns and any refunds, credits, allowances and adjustments paid or otherwise provided to customers with respect to any goods, products, merchandise, services or other items sold in the Facilities or the Internet Store (including through any New Sales Medium), (4) the amount of any sales or similar Taxes on goods, products, merchandise, services or other items, (5) the amount of any shipping expenses charged to customers in connection with the sale of Disney Merchandise in the Facilities or the Internet Store, (6) proceeds from insurance with respect to property damage or liability suffered or incurred by Licensee, (7) proceeds received by Licensee in connection with any civil forfeiture, condemnation or other seizure of any Business Property by any Governmental Entity and (8) the amount of any account balances or other receivables relating to sales of goods, products, merchandise, services or other items in the Facilities or the Internet Store that are charged off as uncollectible in accordance with GAAP and Licensee's past practice since the Effective Date (each such account balance or other receivable, a **"Charged Off Receivable"**), provided, that, for purposes of this subparagraph (8), (A) the amount of

any such Charged Off Receivable shall be excluded from Net Retail Sales for the Fiscal Year of Licensee in which such account balance or other receivable is charged off, (B) under no circumstances shall the aggregate amount of Charged Off Receivables excluded from Net Retail Sales for any Fiscal Year of Licensee exceed one-half of one percent (0.5%) of Net Retail Sales for such Fiscal Year of Licensee and (C) if any such Charged Off Receivable is subsequently collected during the Term, the amount thereof shall be included in Net Retail Sales for the Fiscal Year of Licensee in which such Charged Off Receivable is collected. For purposes of clarification, Net Retail Sales shall include all revenues generated from (x) the sale in the Facilities or the Internet Store (including through any New Sales Medium) of any goods, products, merchandise, services or other items sourced from other licensees of TDSF or its Affiliates even if such other licensees also are required to pay a royalty to TDSF or its Affiliates with respect thereto and (y) the sale in the Facilities, the Internet Store (including through any New Sales Medium) or otherwise of goods, products, merchandise, services or other items to employees of Licensee or TDSF or any of their respective Affiliates.

7.1.2 Royalty for Non-Core Stores. Notwithstanding anything to the contrary contained in Section 7.1.1, with respect to each Non-Core Store, (i) until the later to occur of (a) the expiration of the Original Lease Term for such Non-Core Store, (b) the early termination of the Lease Agreement for such Non-Core Store and (c) the second (2nd) anniversary of the Effective Date (such period, the **"Initial Non-Core Stores Abatement Period"**), no Monthly Facilities Royalty Amount shall be payable with respect to Net Retail Sales from such Non-Core Store; (ii) following the Initial Non-Core Stores Abatement Period with respect to any Non-Core Store, if such Non-Core Store continues to be operated by Licensee as a Facility hereunder (whether under an amended or new Lease Agreement, on a month-to-month basis or otherwise), either (a) the Monthly Facilities Royalty Amount payable with respect to such Non-Core Store shall be equal to two and one-half percent (2.5%) of all Net Retail Sales therein (rather than five percent (5%) of all Net Retail Sales therein, as provided under Section 7.1.1) for a period of two (2) years following the Initial Non-Core Stores Abatement Period, if FY04 Cash Contribution equals Eight Million Dollars ($8,000,000) or more, (b) no Monthly Facilities Royalty Amount shall be payable with respect to Net Retail Sales from such Non-Core Store for a period of three (3) years following the Initial Non-Core Stores Abatement Period, if FY04 Cash Contribution equals at least Four Million Dollars ($4,000,000) but less than Eight Million Dollars ($8,000,000), (c) no Monthly Facilities Royalty Amount shall be payable with respect to Net Retail Sales from such Non-Core Store for a period of four (4) years following the Initial Non-Core Stores Abatement Period, if FY04 Cash Contribution equals at least Two Million Dollars ($2,000,000) but less than Four Million Dollars ($4,000,000), or (d) no Monthly Facilities Royalty Amount shall be payable with respect to Net Retail Sales from such Non-Core Store for a period of five (5) years following the Initial Non-Core Stores Abatement Period, if FY04 Cash Contribution equals less than Two Million Dollars ($2,000,000); and (iii) following the Initial Non-Core Stores Abatement Period and the applicable period referenced in subparagraph (ii) of this Section 7.1.2, such Non-Core Store shall be treated the same as all other Facilities under Section 7.1.1 for purposes of the Monthly Facilities Royalty Amount payable on Net Retail Sales therein. For purposes of clarification, in the event that any Non-Core Store is closed and a new Facility is opened in the same Shopping Mall, Select Street Location or Qualifying Strip Center as the closed Non-Core Store, such new Facility shall not be deemed to be a Non-Core Store for purposes of determining Licensee's royalty obligations pursuant to this Section 7.

7.1.3 Facilities Royalty Abatement. Notwithstanding anything to the contrary contained in Section 7.1.1, no Monthly Facilities Royalty Amount shall be required to be paid or owed by Licensee to TDSF on any Net Retail Sales generated at the Facilities during the period starting on the Effective Date and ending on the second (2nd) anniversary of the Effective Date. The royalty abatement contemplated by this Section 7.1.3 (i) shall be deemed to run concurrently with the royalty abatement and/or reduction period for Non-Core Stores contemplated by Section 7.1.2 and (ii) shall not under any circumstances be deemed to apply to Net Retail Sales arising from or through the Internet Store, with respect to which Net Retail Sales the royalty obligations set forth in this Section 7 shall commence immediately upon the Internet Start Date.

7.2 Guarantee. Commencing with the third (3rd) Contract Year and for each Contract Year thereafter, if the Contract Year Royalty Amount for such Contract Year is less than the Guarantee Amount for such Contract Year, Licensee shall pay an amount equal to such shortfall in one lump sum cash payment to TDSF within two (2) months following the end of such Contract Year. For purposes of this Agreement, (i) the **"Contract Year Royalty Amount"** shall mean the aggregate amount of Monthly Facilities Royalty Amounts due by Licensee to TDSF with respect to any Contract Year; (ii) the **"Guarantee Amount"** shall mean an amount equal to the greater of (a) sixty percent (60%) of the Floor Guarantee and (b) eighty percent (80%) of the Average Royalty Amount; (iii) the **"Average Royalty Amount"** shall mean the average of the Contract Year Royalty Amounts for the two (2) Contract Years immediately preceding the Contract Year for which the Guarantee Amount is being calculated; and (iv) the **"Floor Guarantee"** shall mean (x) for the third (3rd) Contract Year, an amount equal to the Contract Year Royalty Amount that would have been payable under this Agreement for the twelve (12) month period ending October 2, 2004 if this Agreement had been in effect during such period with respect to the Facilities subject to this Agreement, as calculated in good faith by TDSF, and (y) for each Contract Year following the third (3rd) Contract Year, the amount calculated under the preceding subparagraph (x) increased at an annual compound rate equal to the increase, if any, in the CPI during each such Contract Year calculated in accordance with the CPI Adjustment Methodology; provided, that, in calculating the Average Royalty Amount and the Floor Guarantee, (1) Section 7.1.3 shall be treated as if it were inapplicable at all times under this Agreement and (2) Section 7.1.2 shall be treated as if it applied during any period used in such calculations if and only to the extent it was applicable to any Non-Core Store during the Contract Year for which the Guarantee Amount is being calculated (and, accordingly, the Floor Guarantee and the Average Royalty Amount may increase as and to the extent Non-Core Stores become subject to royalty obligations in accordance with Section 7.1.2). Licensee shall not be entitled to any credit or offset against its obligations as to the Guarantee Amount under this Section 7.2 in any Contract Year in the event that the Contract Year Royalty Amount in any other Contract Year exceeds the Guarantee Amount for such Contract Year (i.e., no "rollover" credit or offset from one Contract Year to another).

7.3 Manner of Payments. All payments of Monthly Facilities Royalty Amounts, Monthly Internet Store Royalty Amounts, Monthly Royalty Amounts, Guarantee Amounts and any other payments due by Licensee to TDSF under this Section 7 (collectively, **"Licensee Payments"**) shall be made by Licensee to TDSF via federal wire transfer to an account designated by

TDSF in writing. Licensee shall be solely responsible for any applicable sales, use, withholding (imposed by Canada or any other non-U.S. taxing jurisdiction), value-added or other similar Taxes due on the Licensee Payments, regardless of whether such Taxes must be collected by TDSF, and for any other Taxes arising in connection with this Agreement; provided, that TDSF shall be solely responsible for any local, state, provincial or federal income Taxes (or franchise, gross receipts or other similar Taxes imposed in lieu of net income Taxes), other than withholding Taxes imposed by Canada or any other non-U.S. taxing jurisdiction, payable by TDSF or its Affiliates on, or in respect of, the Licensee Payments. In addition, each Licensee Payment shall be accompanied by documentation in a form and manner reasonably satisfactory to TDSF and Licensee supporting the amount of such Licensee Payment. Upon TDSF's request, Licensee shall promptly provide TDSF with such additional information or documentation as TDSF may reasonably require in connection with its review and analysis of any Licensee Payment. For purposes of clarification, nothing contained in this Section 7.3 is intended, as between the parties hereto, to alter the responsibility of the parties to the Acquisition Agreement for the payment of Taxes as and to the extent set forth in the Acquisition Agreement.

7.4 U.S. Dollars; Exchange Rates. All Licensee Payments are to be made in U.S. dollars. In the event an exchange rate is necessary, Licensee shall use the official exchange rate as published in the Wall Street Journal, New York Edition, on the last Business Day of the applicable Retail Month, and Licensee shall identify such exchange rate on the applicable documentation provided to TDSF.

7.5 Termination of Agreement. In the event that this Agreement is terminated early by TDSF pursuant to Section 13, without prejudice to any other right or remedy available to TDSF in the event of such termination, in addition to paying in full and in a timely manner any Guarantee Amount for the Contract Year immediately preceding the Contract Year that contains the date of such termination, Licensee shall, within two (2) months following the effective date of such termination, pay to TDSF in one lump sum cash payment the amount (if any) by which (i) an amount equal to (a) the Guarantee Amount for the Contract Year in which such termination occurs, multiplied by (b) a fraction, the numerator of which is the number of days during such Contract Year through and including the effective date of such termination and the denominator of which is three hundred sixty-five (365), *exceeds* (ii) the aggregate amount of Monthly Royalty Amounts paid by Licensee to TDSF in respect of the Contract Year in which such termination occurs through and including the date of termination.

7.6 TDS Canada and Canadian Royalties. TDSF and Licensee acknowledge and agree that (i) notwithstanding anything to the contrary contained in this Agreement, under no circumstances shall TDS Canada be liable for the payment of any Monthly Royalty Amount that is attributable to TDS USA's use of the Licensed Materials or any payments in respect of the Guarantee Amount (provided that, for purposes of clarification, TDS USA shall remain liable for the full amount of all Licensee Payments hereunder, including, without limitation, those arising from TDS Canada's use of the Licensed Materials), (ii) the Monthly Facilities Royalty Amount that is attributable to Net Retail Sales generated by the Facilities located in Canada is allocable ninety-five percent (95%) to the production or reproduction of Licensed Materials consisting of copyrighted Licensed Materials and five percent (5%) to Licensed Materials consisting of trademarks, and (iii) the Monthly Royalty Amount that is attributable to TDS Canada's use of the Licensed Materials shall at all times be payable to an Entity that is considered resident of the United States under Article IV of the Canada-United States Tax Treaty and that is entitled to all benefits thereunder.

7.7 TDS USA Royalties. TDSF and Licensee acknowledge and agree that the Monthly Royalty Amount that is attributable to TDS USA's use of the Licensed Materials and any payment in respect of the Guaranteed Amount (i) shall at all times be payable to an entity that, for United States tax purposes, is either a United States corporation, a United States partnership or an entity one hundred percent of the interests in which are owned by either a United States corporation or a United States partnership and (ii) is allocable ninety-five percent (95%) to the production or reproduction of Licensed Materials consisting of copyrighted Licensed Materials and five percent (5%) to Licensed Materials consisting of trademarks.

7.8 Use of Payments. Licensee understands and agrees that neither TDSF nor any of its Affiliates shall have any obligation whatsoever to account to Licensee for the use or application of any of the Licensee Payments, and TDSF and its Affiliates may use all such Licensee Payments for any purpose whatsoever as solely determined by TDSF or any of its Affiliates.

7.9 No Third Party Royalty Payments. TDSF acknowledges and agrees that, subject to any provision of this Agreement that expressly requires the payment of a royalty or license fee to a third party, including, without limitation, Sections 4.6 and 4.7, and other than (x) the Licensee Payments and (y) any other amounts due to TDSF or its Affiliates under this Agreement (including, without limitation, indemnification obligations of Licensee pursuant to Section 12.1), Licensee shall have no obligation to pay any royalties or license fees to any other Person as a result of Licensee's use of the Disney Properties pursuant to and in strict accordance with the terms of this Agreement.

8. OVERSIGHT OF RELATIONSHIP.

8.1 TDSF Advisors. During the Term, TDSF will designate one (1) or more full-time employees of TDSF and/or its Affiliates having an appropriate level of seniority as determined by TDSF in its business judgment (the **"TDSF Advisors"**) (such number to be determined by TDSF in its sole discretion from time to time), whose responsibilities will include, in addition to any responsibilities such employees might have that are not related to this Agreement, (i) internally managing and supervising the overall relationship between TDSF and Licensee as contemplated by this Agreement, (ii) coordinating TDSF's review of approval requests from Licensee, including, without limitation, requests pursuant to Section 5 and Section 9 and such other requests as Licensee may make from time to time in accordance with this Agreement (collectively, **"Approval Requests"**), and (iii) assisting Licensee with any problems that may arise, or any complaints that Licensee may have, in connection with TDSF's review of Approval Requests or other issues arising under this Agreement. TDSF shall designate one (1) senior TDSF Advisor as the "relationship manager" with respect to the relationship between Licensee and TDSF hereunder. TDSF, in its sole discretion, may

change from time to time which of its employees are designated as TDSF Advisors and as the "relationship manager," provided, that TDSF shall notify Licensee of such change.

8.2 Licensee Advisors. During the Term, Licensee will designate a certain number of full-time employees of Licensee, Licensee Parent, Canadian Parent and/or TCP having an appropriate level of seniority as determined by Licensee in its business judgment (the **"Licensee Advisors"**) (such number to be determined by Licensee in its sole discretion from time to time), whose primary responsibilities will include (i) internally managing and supervising the overall relationship between TDSF and Licensee as contemplated by this Agreement, (ii) coordinating Licensee's submission of Approval Requests to TDSF, and (iii) otherwise exercising Licensee's rights under this Agreement. Licensee shall designate a senior Licensee Advisor as the "relationship manager" with respect to the relationship between Licensee and TDSF hereunder. Licensee, in its sole discretion, may change from time to time which of its employees are designated as Licensee Advisors and as the "relationship manager," provided, that Licensee shall notify TDSF of such change.

8.3 Joint Advisory Committee. Each of TDSF and Licensee shall designate three (3) TDSF Advisors and three (3) Licensee Advisors, respectively, each of which shall be a senior officer of TDSF or TWDC, on the one hand, or Licensee, Licensee Parent, Canadian Parent or TCP, on the other hand, to participate in a joint advisory committee under this Agreement (the **"Joint Advisory Committee"**). The Joint Advisory Committee will meet at least once per Fiscal Quarter of Licensee during each Contract Year to discuss, and advise the parties hereto on, overall matters pertaining to the Business and its performance. Meetings may occur by telephone conference or in person, provided, that, if meetings are conducted in person, the location shall alternate between the corporate headquarters of TDSF and Licensee, unless otherwise mutually agreed. The Joint Advisory Committee may establish subcommittees or working groups from time to time in its discretion to address specific issues. In addition to such other matters as may come before it, the Joint Advisory Committee shall discuss and advise the parties on the following:

8.3.1 The Annual Business Plan prepared by Licensee in accordance with Section 9.2, together with rolling three-year projections and budgets for the Business for each Contract Year, shall be prepared by Licensee in consultation with TDSF at least four (4) Retail Months prior to the commencement of each Contract Year (or, in the case of the first (1st) Contract Year, within four (4) Retail Months following the Effective Date);

8.3.2 The Quarterly Merchandise Plan prepared by Licensee in accordance with Section 9.6.1, which shall be prepared by Licensee in consultation with TDSF at least one (1) Retail Month prior to the commencement of each Fiscal Quarter of Licensee (or, in the case of the first (1st) Fiscal Quarter following the Effective Date, within one (1) Retail Month following the Effective Date);

8.3.3 The marketing plan for each Fiscal Quarter of Licensee, including marketing, advertising and promotional activities contemplated by Licensee to be conducted within the Facilities (e.g., window design, store displays), the Internet Store and in all other marketing channels, which shall be prepared by Licensee in consultation with TDSF at least one (1) Retail Month prior to the commencement of each Fiscal Quarter of Licensee (or, in the case of the first (1st) Fiscal Quarter, within one (1) Retail Month following the Effective Date);

8.3.4 (i) Operating results of the Business on a consolidated basis, including financial statements that have been prepared in accordance with GAAP and delivered by Licensee to TDSF under Section 9.11, (ii) operational matters related to the Facilities and the Internet Store, (iii) customer satisfaction surveys and survey results to the extent conducted by Licensee in its sole discretion, and (iv) such other matters that may arise from time to time in connection with this Agreement or the Business;

8.3.5 A presentation by TDSF to Licensee setting forth information pertaining to future business marketing plans and promotional initiatives of TDSF and its Affiliates that are likely to result in the development of additional Disney Properties for use by Licensee hereunder or other merchandising or promotional opportunities (including new opportunities for use of existing Disney Properties) for Licensee hereunder, including, as applicable, information pertaining to the motion picture, television and Theme Park businesses of TDSF and its Affiliates, new strategic alliances, and character properties that may be designated as Disney-Branded Properties or Non-Disney-Branded Properties. Notwithstanding the foregoing, TDSF shall not be required to disclose to Licensee any information that it is or may be (as determined by TDSF in its business judgment) prohibited from disclosing pursuant to any Contract binding on TDSF or its Affiliates or any of their properties, applicable Law or the rules and regulations of any stock exchange on which TDSF's or any of its Affiliates' Securities are traded; and

8.3.6 Procedures for the submission and review of Approval Requests (in connection therewith, if TDSF either repeatedly fails to grant its approval of Approval Requests or repeatedly fails to respond to Licensee in granting or denying its approval of Approval Requests within the time periods specified herein, and such repeated failures to respond materially impair the ability of Licensee to operate the Business in accordance with the applicable Annual Business Plan, then, upon the written request of Licensee, the Joint Advisory Committee shall promptly conduct a special meeting at which it shall review the process for the submission and review of Approval Requests under this Agreement and shall make recommendations regarding the resolution of such issues to the senior executive management of each of TWDC and Licensee, who shall consider such recommendations in good faith and shall promptly implement or cause to be implemented those recommendations that they consider appropriate in their respective business judgment and not inconsistent with the terms of this Agreement).

Notwithstanding anything to the contrary contained herein, the Joint Advisory Committee shall act solely in an advisory capacity in a manner designed to foster mutual cooperation between the parties in connection with this Agreement and in order to promote the Business, but none of the activities of the Joint Advisory Committee nor any purported approval of any matter by the Joint Advisory Committee shall limit or restrict in any manner whatsoever the approval rights of TDSF as contained in this Agreement nor be deemed to constitute an approval by TDSF pursuant to this Agreement, in each case including, without

limitation, under Sections 5 and 9, nor be deemed to establish a course of conduct of the parties hereunder, nor otherwise be deemed to amend or modify in any manner any of the terms of this Agreement.

9. OPERATION OF THE FACILITIES AND THE INTERNET STORE.

Licensee shall at all times operate the Business and each of the Facilities and the Internet Store strictly in accordance with the terms and conditions set forth in this Agreement (including, without limitation, the Schedules hereto and the matters set forth in this Section 9), any authorizations, waivers or consents given by TDSF from time to time in accordance herewith, the rules, regulations, standards, policies, procedures and guidelines of TDSF and its Affiliates as set forth in the Operating Manual, and any other guidelines as TDSF and Licensee may agree upon from time to time in their respective sole discretion.

9.1 General Operating Standards.

9.1.1 Operation Through Facilities and Internet Store. During the Term, Licensee shall not operate the Business or offer or sell goods, products, merchandise, services or other items to consumers through any store, facility, location, venue, methodology or channel of distribution other than the Facilities and the Internet Store. Without limiting the foregoing, Licensee acknowledges and agrees that Licensee shall not offer or sell goods, products, merchandise, services or other items through any sales medium that was not used in the Facilities or the Internet Store immediately prior to the Effective Date, including, without limitation, vending machines, photocapture systems and/or computers, without the prior written approval of TDSF (as determined by TDSF in its sole discretion), which approval shall be sought in accordance with the approval provisions set forth in Section 9.19.3. Any such new sales medium approved by TDSF in accordance with the terms hereof is referred to herein as a **"New Sales Medium**."

9.1.2 Maximizing Value of the Business. Licensee shall at all times operate the Business and make business decisions with a view toward maximizing its standalone value as a retail operation. Without limiting the generality of the foregoing, Licensee agrees that (a) the Business, the Facilities and the Internet Store shall not be operated primarily as a promotional vehicle for other businesses or interests of Licensee or any of its Affiliates and (b) Licensee shall, and shall cause its Affiliates to, protect the business and financial interests of Licensee and the Business and, to that end, Licensee (i) shall not, and shall not permit its Affiliates to, take any action that is intended to favor Licensee's Affiliates or any third party to the detriment of Licensee, and (ii) shall ensure that all transactions by Licensee or any of its Affiliates (including, without limitation, transactions between Licensee and any of its Affiliates, lease negotiations and other transactions with third parties) that are directly or indirectly related to, or that would reasonably be expected to have a direct or indirect impact on, Licensee and/or the Business shall be conducted at all times on an arm's length, commercially reasonable basis and on terms and conditions that are not intended to favor Licensee's Affiliates or any third party to the detriment of, or in a manner that would have a negative impact on, Licensee. For purposes of the preceding sentence, TDSF and Licensee acknowledge and agree that any action, term or condition that is expressly required or authorized pursuant to this Agreement shall not be deemed to be intended to favor Licensee's Affiliates or any third party to the detriment of Licensee. In connection with carrying out Licensee's obligations hereunder and the exercise of Licensee's rights hereunder, Licensee shall protect the image, reputation, brand, appearance and quality of, and goodwill associated with, TDSF and its Affiliates, the businesses, properties and products of TDSF and its Affiliates, the Disney Properties, and any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF and its Affiliates, and shall maintain the reputation of the Facilities, the Internet Store and the Business as a high quality retail operation by offering high quality Disney Merchandise at good value and an entertaining shopping experience in quality locations. Licensee shall not, and shall not permit any of its Affiliates to, take any action or engage in any conduct, activity or practice that is inappropriate or injurious to, or inconsistent with, the image, reputation, brand, appearance and quality of, or that may impair the goodwill associated with, TDSF and its Affiliates, the businesses, properties or products of TDSF and its Affiliates, the Disney Properties, or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF and its Affiliates.

9.1.3 Operation By Licensee. During the Term, other than as expressly provided herein and other than pursuant to and in accordance with the TCP Intercompany Services Agreement or as TDSF may approve in writing in its sole discretion, Licensee shall not cause or permit the Business, the Facilities, the Internet Store or any material assets relating to or used in connection therewith (including, without limitation, any Business Properties, Lease Agreements, material personal property and leases with respect thereto, material Contracts and intellectual property rights) to be owned, leased, licensed, controlled and/or operated by any Person (including, without limitation, any subcontractor or agent) other than TDS USA and TDS Canada. In addition, during the Term, unless TDSF shall otherwise consent in writing in its sole discretion, Licensee shall cause the Business conducted within the United States and its territories and possessions to be owned, leased, licensed, controlled and operated by TDS USA and the Business conducted within Canada to be owned, leased, licensed, controlled and operated by TDS Canada.

9.1.4 No Other Operations. Neither Licensee nor any of its Subsidiaries shall, whether directly or indirectly, own, lease, license, control, maintain, manage, staff, supply, administer, market, advertise, promote, operate or otherwise engage in any manner in any business or activity or asset other than the Business, and Licensee Parent and Canadian Parent shall have no business, assets or operations other than solely holding the equity interests in TDS USA and TDS Canada, respectively.

9.2 Annual Business Plans. At least three (3) Retail Months prior to the beginning of each Contract Year, Licensee shall prepare and submit to TDSF an annual budget and business plan (the **"Annual Business Plan"**) for the Business for the upcoming Contract Year (except that the Annual Business Plan for the first (1st) Contract Year shall be prepared and submitted within four (4) Retail Months after the Effective Date). The Annual Business Plan shall take into account and reflect, among other things, projected revenues, expenses, profitability and Licensee Payments for the upcoming Contract Year and shall include a plan for the

application of capital expenditures for maintaining and refurbishing the Facilities. Licensee shall consult with TDSF regarding the Annual Business Plan and shall consider in good faith TDSF's comments and suggestions with respect thereto.

9.3 Opening and Closing Business Properties; Maintenance and Refurbishment of Facilities.

9.3.1 Initial Facilities; Opening and Closing Facilities. As of the Effective Date, the Store Facilities and Outlet Facilities subject to this Agreement are those identified on Schedule 9.3.1, provided that such Schedule 9.3.1 may be amended to add additional Store Facilities and/or Outlet Facilities upon consummation of the Subsequent Closing. From time to time during the Term, subject to the provisions of this Agreement, including, without limitation, Sections 9.3.1, 9.3.2(a), 9.3.3, 9.7.1(e) and 9.19, Licensee may open and operate additional Facilities and may, subject to the provisions of this Agreement, including, without limitation, Sections 9.3.1, 9.3.2(a), 9.3.4 and 9.19, close and cease operations at any Facilities. Except as otherwise provided in Sections 9.3.1(a) and 9.3.1(b), each opening of a new Facility and each closing of a Facility shall be subject in each instance to the prior written approval of TDSF (such approval or disapproval determined by TDSF in its sole discretion), which approval shall be sought in accordance with the approval provisions set forth in Section 9.19.1.

(a) Permitted Openings. Subject to the provisions of Section 9.3.1(c) and Section 9.3.3, Licensee shall be permitted to open Facilities at locations selected by Licensee without seeking or obtaining TDSF's approval of such locations as follows (collectively, the "**Permitted Openings**"): (i) during the Stub Period and the first (1st) and second (2nd) Contract Years, Licensee shall be permitted to open up to (but not more than) fifteen (15) Facilities in the aggregate at locations selected by Licensee, provided, that (A) the aggregate number of such Facilities opened by Licensee during the Stub Period and the first (1st) Contract Year shall not exceed seven (7) and (B) the aggregate amount of liability under each lease for each such Facility (consisting of base rent, percentage rent, common area maintenance charges, taxes and other comparable payment obligations) during the full term of such lease entered into during the Stub Period or the first (1st) or second (2nd) Contract Year shall not exceed Five Million Dollars ($5,000,000) per lease with respect to more than ten (10) of such Facilities or Seven Million Five Hundred Thousand Dollars ($7,500,000) with respect to any lease for any such Facility; (ii) during each of the third (3rd), fourth (4th) and fifth (5th) Contract Years, Licensee shall be permitted to open up to (but not more than) ten percent (10%) of the number of Facilities operated by Licensee on the first day of each such Contract Year at locations selected by Licensee; and (iii) during the sixth (6th) Contract Year and each Contract Year thereafter, Licensee shall be permitted to open up to (but not more than) twenty percent (20%) of the number of Facilities operated by Licensee on the first day of each such Contract Year at locations selected by Licensee; provided, that, (I) in the event that Licensee opens fewer than fifteen (15) Facilities in the aggregate during the Stub Period and the first (1st) and second (2nd) Contract Years, the number of Facilities that Licensee shall be permitted to open at locations selected by Licensee in the third (3rd) Contract Year shall be increased by the number of Facilities equal to the difference between fifteen (15) and the number of Facilities so opened during the Stub Period and the first (1st) and second (2nd) Contract Years, and (II) in the event that Licensee does not open the maximum number of Facilities permitted by subparagraph (ii) or (iii) above in a particular Contract Year (the "**Permitted Openings Measurement Year**"), the number of Facilities that Licensee shall be permitted to open at locations selected by Licensee in the next Contract Year shall be increased by the lesser of (x) the number of Facilities so permitted but not opened during the Permitted Openings Measurement Year and (y) five percent (5%) of the number of Facilities operated by Licensee on the first day of the Permitted Openings Measurement Year. For purposes of clarification, the number of Permitted Openings permitted by this Section 9.3.1(a) shall be in addition to (1) Lease Extension Arrangements with respect to Facilities already operating during the applicable Contract Year, and (2) replacements of any Facilities that are closed during the applicable Contract Year (excluding replacements of Non-Core Stores unless a new Facility replacing any such Non-Core Store shall be opened in the same Shopping Mall, Select Street Location or Qualifying Strip Center as the closed Non-Core Store). Thus, by way of example and not limitation, if, at the beginning of the third (3rd) Contract Year, Licensee operated three hundred (300) Facilities, and if, during such third (3rd) Contract Year, Licensee entered into Lease Extension Arrangements to renew expiring Lease Agreements for ten (10) of such Facilities and closed five (5) of such Facilities in accordance with the terms of this Agreement, Licensee would be permitted to select the locations at which to open five (5) new Facilities to replace the five (5) closed Facilities plus thirty (30) additional locations pursuant to subparagraph (ii) of this Section 9.3.1(a), in each case without seeking or obtaining TDSF's approval of such locations.

(b) Permitted Closings. Subject to the provisions of Section 9.3.1(c) and Section 9.3.4, Licensee shall be permitted, during each Contract Year, to close, at locations selected by Licensee, (i) any Non-Core Store and (ii) up to (but not more than) ten percent (10%) of the number of Facilities (excluding Non-Core Stores) operated by Licensee on the first day of such Contract Year, in each case without seeking or obtaining TDSF's approval of such locations (collectively, the "**Permitted Closings**"), provided, that, (a) except with respect to a Non-Core Store, each location at which Licensee has elected not to enter into a Lease Extension Arrangement to renew or extend an expiring or terminating Lease Agreement with respect to the Facility operating at such location shall be counted as one (1) of the Permitted Closings permitted pursuant to this Section 9.3.1(b) (and, accordingly, Licensee acknowledges and agrees that, unless otherwise consented to in writing by TDSF pursuant to the first paragraph of this Section 9.3.1, during any Contract Year, Licensee shall not permit any Lease Agreement with respect to any Facility to expire or terminate if, prior thereto, Licensee has already used all of its Permitted Closings during any Contract Year), and (b) under no circumstances shall Licensee close any Store Facility or permit any Lease Agreement with respect to any Store Facility to expire or terminate if fewer than one hundred fifty (150) Store Facilities would be operated by Licensee following such closure, expiration or termination, such number being the minimum number of Store Facilities that Licensee shall operate at any time during the Term.

(c) Restrictions on Permitted Openings and Permitted Closings. Notwithstanding Licensee's right to open and close certain Facilities, at locations selected by Licensee, pursuant to Sections 9.3.1(a) and 9.3.1(b), all of the other requirements set forth in, and all other TDSF approvals required by, this Agreement with respect to opening and closing Facilities, including, without limitation, Sections 9.3.2(a), 9.3.3, 9.3.4, 9.7.1(e) and 9.19, shall continue to apply with respect to Permitted Openings and

Permitted Closings. In addition, (i) unless otherwise approved in writing by TDSF in its business judgment, (x) the location of any Permitted Opening shall not, within the two (2) year period immediately prior to such opening, have been occupied, licensed, franchised or operated by TCP or any of its Affiliates, including, without limitation, being occupied, licensed, franchised or operated as a "Children's Place" store, and (y) the location of any Permitted Closing shall not, within the two (2) year period immediately following such closing, be occupied, licensed, franchised or operated by TCP or any of its Affiliates, including, without limitation, being occupied, licensed, franchised or operated as a "Children's Place" store, and (ii) not later than twenty (20) Business Days before any Permitted Opening or Permitted Closing, Licensee shall provide to TDSF written notice thereof (the "**Permitted Opening/Closing Notice**"), which Permitted Opening/Closing Notice shall include (A) specific information with respect to the location of the Facility opened or closed and (B) in the case of a Permitted Closing, a statement of procedures for removing, or for barricading or blocking from public view, all Licensed Materials, Disney Properties and other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or any of its Affiliates located within or at such closed Facility (such procedures for such barricading or blocking from public view, the "**Barricade Procedures**") and a statement of procedures for winding down operations at such closed Facility, including, without limitation, plans for asset and inventory reallocation, clean up and exit from the premises, timely notification to employees regarding closure of the Facility, public notification to customers regarding closure of the Facility (which notification may include, among other things, information as to product return procedures and alternative store locations) (the "**Wind Down Procedures**"), provided, that, in the event that (I) such Barricade Procedures are not satisfactory to TDSF as determined by TDSF in its sole discretion or (II) such Barricade Procedures or Wind Down Procedures do not comply with the Operating Manual, TDSF shall, within ten (10) Business Days following the Permitted Opening/Closing Notice, provide to Licensee written notice of its objections to such Barricade Procedures and/or Wind Down Procedures (the "**Closing Procedures Objection Notice**"), which Closing Procedures Objection Notice shall propose such modifications to such Barricade Procedures and/or Wind Down Procedures as TDSF shall determine are necessary or appropriate in its sole discretion, and Licensee shall promptly comply with all such proposed modifications to such Barricade Procedures and/or Wind Down Procedures.

9.3.2 Outlet Facilities; Internet Store; Other Operations.

(a) Outlet Facilities. At any time during the Term, within the Territory, Licensee shall be entitled to own or lease and operate Outlet Facilities representing, in the aggregate, no more than fifteen percent (15%) of the total number of Facilities at any time. Licensee shall operate each Outlet Facility under the name "*Disney Store Outlet*" or such other name as shall be approved by each of TDSF and Licensee in its respective sole discretion.

(b) Internet Store. Commencing on the Internet Start Date and continuing during the remainder of the Term, Licensee shall operate the Business through the Internet Store and shall fully exercise its rights with respect to the TDS Internet Domains, subject to the following limitations and restrictions:

(i) the Internet Store shall be located on the World Wide Web at the TDS Internet Domains or such other domain names or URLs as Licensee may request and TDSF may approve in its sole discretion, but not at any other domain name or URL;

(ii) the Internet Store shall be operated on a full-retail pricing model (as opposed to on a discount or warehouse pricing model or in a manner comparable to the Outlet Facilities) (except for promotional and seasonal sales), each SKU of Disney Merchandise shall be sold in the Internet Store at substantially the same price at which such SKU of Disney Merchandise is or was, or is expected to be, sold in the Store Facilities. The Internet Store shall not be operated as a method of liquidating excess, obsolete or otherwise slow-moving inventories of Disney Merchandise;

(iii) throughout the Term, the Internet Store shall be operated and available for access seven (7) days per week, twenty-four (24) hours per day, except for reasonable periods of downtime for scheduled maintenance and/or upgrades (including launching new features) and for unforeseen power and/or internet outages, virus or hacker attack, telecommunications line failure, communications provider strike, terrorist act, act of war, other Force Majeure event or other technical malfunctions; provided, that (1) Licensee shall use commercially reasonable efforts to minimize the amount of any such downtime, (2) Licensee shall provide TDSF with at least two (2) Business Days' advance written notice of routine maintenance and/or upgrades and shall use commercially reasonable efforts to perform such maintenance and/or upgrades at such times and in such manner as will minimize disruptions to and downtime for the Internet Store (by, for example and without limitation, performing such maintenance and/or upgrades during low-traffic periods), and (3) in the event that any downtime is expected to or does exceed five (5) consecutive Business Days, Licensee shall consult with TDSF regarding methods for reducing such downtime and for addressing customer service issues during such downtime and shall consider in good faith TDSF's suggestions and recommendations in connection therewith;

(iv) the Internet Store shall not in any manner whatsoever be linked to, advertised on, promoted by or otherwise associated in any manner with any other Person (besides Licensee and TDSF and/or its Affiliates, as the case may be), website, domain name, URL or Internet location without the prior written consent of TDSF, which may be granted or denied by TDSF in its sole discretion, provided, that (i) Licensee shall not be responsible for, nor be deemed to be in breach of this provision as a result of, any unsolicited links to the Internet Store (except that Licensee shall (x) remove any such unsolicited links that have been established by any Affiliate of Licensee and (y) use its commercially reasonable efforts to remove any such unsolicited link that Licensee becomes aware of and that is to a website, domain name, URL or other Internet location that, as determined by TDSF in its sole discretion, may be injurious to, adversely impact or be inconsistent with the image, reputation, appearance or quality of, or the goodwill associated with, the Disney Properties, the Licensed Materials or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or its Affiliates); and (ii) Licensee may

promote and advertise the Internet Store using online advertisements and promotions (i.e., pay for placement advertisements on search engines and portal websites), subject, in each instance, to TDSF's written approval in its sole discretion (which approval rights may be exercised by TDSF in order to, among other things, prevent any violation of a Strategic Alliance Contract and prohibit Licensee from using any "official" or "original" or comparable titles (e.g., "Official Site of the Disney Stores" or "Official Retailer of The Walt Disney Company" or the "Original Disney Store Online"));

(v) the goods, products, merchandise, services or other items offered in the Internet Store shall be shipped only to retail customers located within the Territory or on United States military bases located outside of the Territory;

(vi) Licensee shall be solely responsible, at its cost, for all matters pertaining to the creation, development, maintenance and operation of the Internet Store and the sale and delivery of products through the Internet Store, including, without limitation, (1) the design, development and production of all webpages for the Internet Store (subject to the approval provisions of Section 5.2), (2) hosting all portions of the Internet Store on its or third-party servers, providing all required infrastructure (i.e., telecommunications and connections to the Internet), and installing, operating and maintaining all required website and distribution center hardware, software, programming and other technology, (3) all order fulfillment requirements, including, without limitation, inventory management and warehousing, product distribution and shipping, transaction processing, billing, collection, product returns, sales tax collection, customer service, telephone inquiries, e-mail communications and other back-office functions for the Internet Store, and (4) ensuring that the Internet Store and all operations relating thereto comply with the requirements of applicable Law, including, without limitation, privacy regulations and sales and use tax regulations in each jurisdiction within the Territory;

(vii) Licensee acknowledges and agrees that none of TDSF or its Affiliates shall have any obligation whatsoever to market, advertise or promote the Internet Store in any manner whatsoever, including, without limitation, through any links, buttons, tool bars or other navigation instruments or advertising on any Internet operations or websites of, or any other properties owned, operated or controlled by, or licensed to, TDSF or its Affiliates, and any such marketing, advertising or promotion that TDSF or any of its Affiliates may agree to conduct shall be the subject of a separate written agreement with separate consideration; provided, that, (1) at any time during which TDSF or its Affiliates shall own, operate or control, or have a license to, the Internet website located at www.disney.com (or any replacement thereof or successor thereto during the Term), TDSF shall, or shall cause its Affiliates to, display on such website, at a location therein determined by TDSF or its Affiliates in their sole discretion following consultation in good faith with Licensee (which location shall not be on, but shall not be more than three (3) hyperlinks from, the home page of such website), one or more webpages that feature a system whereby a customer may request (via text input only) the address of a Facility within the Territory via zip code (or comparable methodology mutually approved by Licensee and TDSF in their respective business judgment, including search via "city" if and to the extent the "store locator" technology located on or at the Internet Store provides such a search mechanism), and the www.disney.com website will communicate with the "store locator" technology located on or at the Internet Store to produce the applicable Facility addresses (provided that (i) the customer will at all times remain within the www.disney.com website and will not be linked or transferred to the Internet Store or any other website and the respective webpage(s) within the www.disney.com website will not contain any link or navigation instrument enabling the customer to exit the www.disney.com website (including, without limitation, links to any map service or comparable website) and (ii) Licensee will be responsible at all times for all costs associated with the telecommunications links between the Internet Store and the www.disney.com website and with the creation, maintenance, hosting and operation of the applicable "store locator" technology, any related databases and/or any comparable replacement technology), and (2) at any time and from time to time during the Term, TDSF shall have the right (but not the obligation), in its sole discretion, to, or to cause its Affiliates to, provide a button, tool bar or other navigation instrument creating a hyperlink from the home page of the Internet website located at www.disney.com (or any replacement thereof or successor thereto during the Term) to the Internet Store (the "**Hyperlink**"), with the placement, size, location, prominence, design, technology and all other elements of such navigation instrument to be determined by TDSF in its sole discretion, provided, that TDSF shall be entitled to, or to cause its Affiliates to, modify, remove, re-install and/or replace the Hyperlink at any time and from time to time as determined by TDSF in its sole discretion;

(viii) other than advertisements and other promotions for the Facilities and/or the Internet Store (which advertisements may include, without limitation, advertisements and promotions for Disney Merchandise) or as otherwise may be approved by TDSF in its sole discretion, the Internet Store shall not contain, bear or feature any marketing, advertising or promotional content, including, without limitation, through any links, buttons, tool bars or other navigation instruments; provided, that Licensee shall, within the Internet Store, provide a button, tool bar or other navigation instrument creating a hyperlink from the Internet Store to the Internet website located at www.disney.com or such website or other online portion of the DDM Business of TDSF and its Affiliates as TDSF may designate in its sole discretion following TDSF's consultation in good faith with Licensee (provided, that, (1) if such designated website or other online portion of the DDM Business consists of a website primarily focused on the retail sale of Hardlines, Softlines and/or Toys/Plush, the designation thereof by TDSF shall be subject to the approval of Licensee in its business judgment; and (2) if such designated website or other online portion of the DDM Business consists of a website primarily focused on the retail sale of Softlines bearing, featuring or incorporating Disney-Branded Properties, the designation thereof by TDSF shall be subject to the approval of Licensee in its sole discretion), with the placement, size, location, prominence, design, technology and all other elements of such navigation instrument to be determined by TDSF in its sole discretion;

(ix) the design, appearance and "look and feel" of the Internet Store (including, without limitation, all webpage templates of the Internet Store) shall be subject to TDSF's written approval in its sole discretion in accordance with the approval procedures set forth in Section 5; and

(x) the Internet Store shall be operated in accordance with additional guidelines to be mutually agreed upon by TDSF and Licensee prior to the Internet Start Date, such approval to be granted or denied in each party's respective business judgment (except as to matters pertaining to the Licensed Materials, which shall be subject to the approval of TDSF in its sole discretion and the approval of Licensee in its business judgment).

(c) Distribution Centers. During the Term, Licensee shall be entitled to own, lease and/or otherwise operate such number of Distribution Centers within the Territory as Licensee determines are reasonably necessary in connection with the operation of the Business for purposes of shipping, receiving, storing, warehousing and distributing goods, products and merchandise to, from and among the Facilities and customers of the Internet Store.

9.3.3 Additional Restrictions on Opening Facilities. Licensee shall not open or operate any new Facility that, at the time such Facility is opened, is located within (a) a one-quarter (¼) mile radius of the El Capitan, or (b) a one-half (½) mile radius of the site of any TDSF Flagship Store or any Designated WDW Store. In addition, Licensee shall not permit more than twenty percent (20%) of the total number of Facilities open at any time to be located adjacent to any location that is occupied, licensed, franchised or operated by TCP or any of its Affiliates, including, without limitation, a location occupied, licensed, franchised or operated as a "Children's Place" store (provided that each separately branded chain that is occupied, licensed, franchised or operated by TCP and/or its Affiliates (e.g., The Children's Place and any other retail chain that TCP and/or its Affiliates may operate in the future under a different brand name) shall be considered separately in determining whether such twenty percent (20%) threshold has been met with respect to each such chain).

9.3.4 Additional Restrictions on Closings. Without limiting the restrictions on Permitted Closings set forth in Section 9.3.1(b) or TDSF's approval rights pursuant to Sections 9.3.1 and 9.19.1, Licensee shall continuously operate each Facility until expiration of the Lease Agreement relating thereto or associated therewith, unless earlier cessation of operations at a particular Facility is (a) not in violation of any of the terms of this Agreement and either (i) TDSF has approved in writing in its business judgment the manner in which the related Lease Agreement is terminated or (ii) the respective Landlord under the related Lease Agreement has (x) consented to the early termination thereof, (y) to the extent TDSF or its Affiliates have any obligations under the related Lease Agreement, under applicable Law or under Contract as determined by TDSF in its sole discretion, executed a full and final release of TDSF and its Affiliates from any and all obligations with respect to the applicable Facility, the related Lease Agreement, the cessation of operations at such Facility and the termination of such related Lease Agreement, and (z) not assessed against Licensee or any of its Affiliates, or otherwise required payment by Licensee or any of its Affiliates of, any fees, penalties, expenses or other charges or payments in excess of an amount equal to the tenant's aggregate liability under such related Lease Agreement (consisting of base rent, percentage rent, common area maintenance charges, taxes and other comparable payment obligations) for one (1) year in connection with such cessation of operations and such termination of such related Lease Agreement, (b) authorized or required pursuant to the terms of the related Lease Agreement (without payment by Licensee or any of its Affiliates of any fees, penalties, expenses or other charges or payments in excess of an amount equal to the tenant's aggregate liability under such related Lease Agreement (consisting of base rent, percentage rent, common area maintenance charges, taxes and other comparable payment obligations) for one (1) year), or (c) approved in writing by TDSF in its sole discretion. In connection with the cessation of operations at any Facility (including in the case of a Permitted Closing), Licensee shall (A) either remove all Licensed Materials, Disney Properties and other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or any of its Affiliates located within or at such closed Facility or comply with Barricade Procedures that are satisfactory to TDSF in its sole discretion and (B) comply with the Operating Manual (including, without limitation, any guidelines with respect to Barricade Procedures, Wind Down Procedures, lease termination and other matters related to winding down operations at the Facility).

9.3.5 Maintenance and Refurbishment.

(a) Maintenance. Licensee shall maintain the quality, appearance and presentation standards of the Facilities in accordance with the Operating Manual. Without limiting the foregoing, Licensee shall at all times clean, maintain and keep in good repair the entirety of the Facilities, including the furniture, fixtures and equipment, tenant improvements, shelving, appliances, lighting, signage and other physical attributes thereof, in accordance with the highest standards prevailing in the specialty retail industry.

(b) Facility Refurbishment. In addition to its maintenance obligations pursuant to Section 9.3.5(a), Licensee shall be required to maintain the quality, appearance and presentation standards of the Facilities by completing Refurbishments in accordance with the Annual Business Plans contemplated by Section 9.2 and as approved in writing by TDSF in its sole discretion pursuant to Section 9.19.2 (except to the extent that certain Facility Design Elements are subject to TDSF's approval in its business judgment as set forth in Section 9.3.6(a)). As used herein, "**Refurbishments**" shall mean major remodels of Facilities involving refurbishment of the entire Facility and substantially all its contents. In furtherance of its obligations under this Section 9.3.5(b), Licensee shall (i) before January 1, 2008, (a) complete a Refurbishment of at least ninety percent (90%) of Core Stores (x) that have Lease Agreements with Original Lease Terms expiring prior to January 1, 2008 and (y) that, upon expiration of the Original Lease Term of the related Lease Agreement, are renewed or extended pursuant to Long-Term Leases (whether by amendment, replacement, exercise of an option to extend or otherwise), and (b) open, or complete Refurbishments of, at least one hundred twenty (120) new or existing Store Facilities (the Refurbishment of such Core Stores and the opening or Refurbishment of such Store Facilities as described in the preceding subparagraphs (i)(a) and (i)(b), the "**Initial Minimum Refurbishment Commitment**"), provided, that the parties agree that each Refurbishment completed pursuant to subparagraph (i)(a) shall count as a Refurbishment for purposes of subparagraph (i)(b), and (ii) during the Term, complete a Refurbishment of each Facility in accordance with the following: (A) with respect to each Facility as to which, following the expiration or termination of the initial term of the related Lease Agreement (without regard to any renewal, month-to-month tenancy, option exercise or other extension

thereof), such related Lease Agreement is renewed or the term thereof is otherwise extended pursuant to a Long-Term Lease (whether by amendment, replacement, exercise of an option to extend or otherwise), Licensee shall complete a Refurbishment no later than twelve (12) months (or, in the case of any such renewal or extension completed prior to the end of the third (3rd) Contract Year, no later than eighteen (18) months) following the date of expiration or earlier termination of the initial term of such related Lease Agreement (without regard to any renewal, month-to-month tenancy, option exercise or other extension thereof), whether such new Long-Term Lease is consummated before or after such expiration or earlier termination (provided that the requirement of this Subparagraph (A) shall not apply to any Non-Core Store that is leased pursuant to a Disney Extended Non-Core Store Lease Agreement unless and until such Disney Extended Non-Core Store Lease Agreement is renewed or the term thereof is otherwise extended pursuant to a Long-Term Lease that does not constitute a Disney Extended Non-Core Store Lease Agreement (whether by amendment, replacement, exercise of an option to extend or otherwise)), and (B) if a Refurbishment has not been completed earlier with respect to any Facility pursuant to the preceding subparagraph (ii)(A), Licensee shall complete a Refurbishment of each Facility at least once every twelve (12) years (taking into account, for this purpose, the length of time a Facility was operated prior to the Effective Date). During the last three (3) Contract Years of the Initial Term or any Renewal Term, if the Term has not been renewed pursuant to Section 2.2 prior to the beginning of any such three (3) Contract Year period, Licensee's Refurbishment obligation hereunder shall continue but Licensee shall not be required to spend more than two hundred fifty thousand dollars ($250,000) (such amount to be adjusted each year beginning with the second Contract Year by the CPI in accordance with the CPI Adjustment Methodology) on the Refurbishment of any single Facility.

9.3.6 Look and Feel.

(a) Approval of Facility Design Elements. All aspects of the design and appearance of the Facilities (the "**Facility Design Elements**"), including, without limitation, (i) the store design layout (including the layout of Licensed Materials, Disney Properties and other intellectual property of TDSF or any of its Affiliates), (ii) carpeting and flooring, (iii) furniture, fixtures and equipment, (iv) shelving, (v) appliances, (vi) lighting, (vii) color scheme, (viii) decor, (ix) signage, (x) displays, (xi) cut-outs, (xii) window strips, (xiii) multimedia, (xiv) check-out counters and registers, (xv) packages, bags, gift wrap and similar items, and (xvi) all other physical attributes of the Facilities, shall be subject to TDSF's written approval in its sole discretion; provided, that (A) the size of the Facilities (in square feet), the location of the check-out counters and registers in the Facilities and the layout of shelving and other furniture, fixtures and equipment in the Facilities shall be subject to TDSF's written approval in its business judgment and (B) the design of the stock rooms located in the Facilities shall not be subject to TDSF's approval so long as such design is not, inconsistent with or inappropriate for the "Disney" image, reputation and brand in any material respect. Any approval required pursuant to this Section 9.3.6(a) shall be sought in accordance with the approval provisions set forth in Section 9.19.2.

(b) Ownership of Facility Design Elements. As between TDSF and Licensee, subject to the rights of any licensors or other third parties, TDSF shall be, and be deemed to be, the sole and exclusive owner of all rights with respect to the trade dress of the Facilities and all Facility Design Elements therein and all such rights are reserved to TDSF. Licensee shall neither acquire nor assert any rights in or to such trade dress or Facility Design Elements and, without limiting the foregoing, Licensee hereby assigns to TDSF all rights created by its use of such trade dress and/or Facility Design Elements, together with the goodwill attaching to that part of Licensee's business in connection with which such trade dress and/or Facility Design Elements are used. Nothing in this Section 9.3.6(b) shall be deemed to limit the rights granted to Licensee pursuant to Section 4.1, which entitle Licensee to use such trade dress and/or Facility Design Elements in the Facilities during the Term, subject to and in accordance with the terms of this Agreement.

9.3.7 Days and Hours. The days and hours of operation for any Facility shall comply with the Operating Manual; provided, that the parties hereby acknowledge and agree that operating days and hours may be subject to applicable Law, the rules of a Facility's Landlord, the rules and policies of the developer of the development in which a Facility is located, and other similar rules and regulations (e.g., rules of a tenant association). In the event that any such rules, policies or regulations to which a Facility may be subject are inconsistent with the Operating Manual, Licensee shall consult with TDSF regarding such inconsistency and Licensee and TDSF shall cooperate to determine the appropriate days and hours of operation for such Facility, which shall be consistent with the days and hours of operation for other retail stores in the respective Shopping Mall, Select Street Location, Qualifying Strip Center or, for Outlet Facilities, the Outlet Center, as applicable.

9.4 Staffing.

9.4.1 General Staffing Matters. All staffing matters for each Business Property, including, without limitation, occupational health and safety measures, employee training, and employee uniforms, costumes and grooming, shall comply with, and be subject to, the Operating Manual and applicable Law. Without limiting the generality of the foregoing, the following provisions shall apply with respect to employees of Licensee or its Affiliates assigned to any Business Property or otherwise involved in the operation of the Business (each, a **"Licensee Employee")**:

(a) Licensee Employees shall be fully compensated solely by Licensee;

(b) Licensee Employees shall not be entitled to participate in any of the Employee Benefit Plans of TDSF or its Affiliates;

(c) Licensee shall be solely responsible for all salaries, employee benefits, social security taxes, federal or state unemployment insurance, workers' compensation coverage and any and all required withholding of Taxes and other charges of any kind whatsoever relating to Licensee Employees;

(d) All Licensee Employees shall, as a condition of their employment, agree to be subject to and comply with the Operating Manual, including, without limitation, the rules of conduct (including working hours) and personal appearance standards established in the Operating Manual; and

(e) Licensee shall be responsible for the failure of any Licensee Employee to comply with any applicable provisions of this Agreement or the Operating Manual.

In addition, in the event that TDSF, in its business judgment, determines that any Licensee Employee is conducting himself or herself in a manner that is inappropriate or injurious to, or inconsistent with, the image, reputation, brand, appearance and quality of, or that may impair the goodwill associated with, TDSF and its Affiliates, the businesses, properties or products thereof, the Disney Properties, or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF and its Affiliates, TDSF shall have the right, upon written notice to Licensee, to consult with Licensee with regard to the appropriate manner to resolve the issues relating to such Licensee Employee, and Licensee shall in good faith consider any suggestions made by TDSF, provided, that Licensee shall have the right to make the final determination regarding such Licensee Employee in Licensee's business judgment. TDSF and its Affiliates shall have no liability in connection with any assignment, reassignment, transfer, removal or discharge of any Licensee Employee and Licensee shall indemnify and hold TDSF and its Affiliates harmless in connection therewith.

9.4.2 Employee Compensation and Benefits. Licensee shall, or shall cause its Affiliates to, (i) until the end of the first (1st) Contract Year or the date of termination, if earlier, compensate each Licensee Employee that was employed by TDSF or any of its Affiliates in connection with the operation of the Business immediately prior to the Effective Date (each, a **"Continuing Employee"**) at a rate not less than that at which such Continuing Employee was compensated as an employee of TDSF or any of its Affiliates immediately prior to the Effective Date (including any base salary and, with respect to any employee at the director level or above, performance bonus (other than any retention or similar stay bonus), other incentive compensation and other forms of compensation (excluding stock options or comparable forms of equity compensation)) and (ii) provide each Continuing Employee with Employee Benefit Plans that, in the aggregate, provide benefits that are substantially the same as the benefits provided by TCP to its similarly situated employees having comparable responsibilities; provided, that if the Effective Date is before January 1, 2005, Licensee or its Affiliates shall provide each Continuing Employee with the opportunity to participate in a flexible spending account (within the meaning of Section 125 of the Internal Revenue Code and the regulations and proposed regulations thereunder) effective as of the first payroll date coincident with or following the Effective Date. Each Continuing Employee's period of service and compensation history with TDSF or its Affiliates before the Effective Date shall be counted in determining eligibility for, and the amount and vesting of, benefits under each of Licensee's Employee Benefit Plans. Each Continuing Employee who participates in an Employee Benefit Plan of Licensee or its Affiliates that provides health care benefits (whether or not through insurance) shall participate without regard to any waiting period or any condition or exclusion based on pre-existing conditions, medical history, claims experience, evidence of insurability or genetic factors (other than any condition or exclusion in effect immediately prior to the Effective Date that such Employee Benefit Plan of Licensee or its Affiliates is not required to cover under applicable Law) and, subject to Section 9.4.5(ii), shall receive full credit for any co-payments or deductible payments made, amounts paid toward maximum out-of-pocket expenses and other similar payments made, and for account balances under any flexible spending account existing, before the Effective Date. In the event that any Continuing Employee receives an "Eligible Rollover Distribution" (within the meaning of Section 402(c)(4) of the Internal Revenue Code) from any Employee Benefit Plans of TDSF or its Affiliates, Licensee or its Affiliates shall cause an Employee Benefit Plan maintained by License or its Affiliates in which such Continuing Employee participates that is intended to constitute a qualified plan under Section 401 of the Internal Revenue Code to accept a direct rollover of such eligible rollover distribution (including any portion of such eligible rollover distribution comprised of the outstanding balance of a loan from such Employee Benefit Plan of TDSF or its Affiliates). After the end of the first (1st) Contract Year, Licensee shall provide such compensation to Licensee Employees (including Continuing Employees) as it deems appropriate in its sole discretion.

9.4.3 Employee Discounts. During the Term, Licensee shall provide employee discounts on purchases of products sold in the Facilities and the Internet Store to all employees of Licensee (and, at Licensee's option, to employees of Licensee's Affiliates) in an amount equal to at least thirty percent (30%) off of a product's retail (or discounted or reduced, as the case may be) price; provided, that, commencing in the fourth (4th) Contract Year, Licensee may, in its business judgment, increase or decrease such employee discounts. In addition, for so long as TDSF provides Theme Park passes to Licensee Employees in accordance with the terms of Section 9.9.10, Licensee shall provide the same discount in the same percentage amount to all employees of TDSF and its Affiliates with respect to all purchases of products sold in the Facilities and the Internet Store.

9.4.4 Management Team. Notwithstanding anything to the contrary herein, (i) the hiring or other appointment of the Chief Executive Officer, Chief Financial Officer and Chief Operating Officer/President for TDS USA and TDS Canada, respectively, or, if any such position does not exist, persons serving in similar capacities with comparable duties (collectively, the **"Management Employees"**), (ii) the termination or other dismissal of each of the Management Employees, and (iii) the terms of employment of each of the Management Employees shall be determined by Licensee in its business judgment following Licensee's consultation in good faith with TDSF. Notwithstanding the foregoing, TDSF and its Affiliates shall have no liability in connection with any assignment, reassignment, transfer, removal or discharge of any Management Employee and Licensee shall indemnify and hold TDSF and its Affiliates harmless in connection therewith.

9.4.5 Severance and Other Employee Benefits. TDSF and its Affiliates shall be solely responsible for, and shall indemnify and hold harmless Licensee, Licensee Parent and Canadian Parent against, (i) with respect to any Continuing Employee whose employment is terminated by Licensee or any of its Affiliates prior to the first (1st) anniversary of the Effective Date, severance benefits payable to such Continuing Employee upon such termination in an amount equal to the severance benefits that

would have been payable to such Continuing Employee under the Disney Severance Plan had such termination occurred on the Effective Date, provided, that, if any such terminated Continuing Employee is subsequently rehired by Licensee or any of its Affiliates within one (1) year following such termination, Licensee and/or Licensee Parent shall reimburse TDSF and its Affiliates for all amounts paid thereby pursuant to this subparagraph (i) of this Section 9.4.5, and (ii) all amounts paid by Licensee or Licensee Parent following the Effective Date to ensure that, until the completion of the calendar year in which the Effective Date occurs, Continuing Employees receive full credit for (A) any co-payments or deductible payments made, amounts paid toward maximum out-of-pocket expenses and other similar payments made during such calendar year before the Effective Date, and (B) for account balances under any flexible spending account existing before the Effective Date, provided that, in the case of this subparagraph (B), the Effective Date is on or before December 31, 2004. Any amounts due from TDSF or its Affiliates to Licensee in respect of the preceding sentence shall, following the Effective Date, be invoiced by Licensee to TDSF on a Retail Monthly basis and paid by TDSF or its Affiliate to Licensee within twenty (20) Business Days following receipt of each such invoice. Except as otherwise provided in this Section 9.4.5, Licensee acknowledges and agrees that it is solely responsible for, and shall indemnify and hold harmless TDSF and its Affiliates against, any and all Losses (including, without limitation, additional severance and other amounts payable to or in respect of any Continuing Employee) arising directly or indirectly from, out of or based on the termination of employment of any Continuing Employee (and/or any other Licensee Employee) from and after the Effective Date.

9.5 Customer Service; Product Returns. Licensee acknowledges that, in order to maintain the high reputation and goodwill associated with TDSF and its Affiliates, Licensee's performance of customer service functions in connection with the operation of the Facilities, the Internet Store and the Business must be at least equal to quality levels generally prevailing among full-priced specialty retail chains focused on children's consumer products. To ensure this level of quality, Licensee shall maintain staffing levels for the Facilities, the Internet Store and the Business sufficient to provide prompt and courteous service consistent with the name, image, brand and reputation of TDSF and its Affiliates and otherwise comply with the Operating Manual (including, without limitation, any provisions of the Operating Manual with respect to courtesy and cleanliness) in performing customer service functions in connection with the operation of the Facilities, the Internet Store and the Business. In addition, Licensee shall maintain and comply with product return and refund policies with respect to Disney Merchandise sold through the Facilities and the Internet Store that are at least as favorable to Licensee's customers as the policies in effect at the Facilities and the Internet Store immediately prior to the Effective Date, except for modifications to such policies as may be approved by each of Licensee and TDSF in its respective business judgment.

9.6 Disney Merchandise.

9.6.1 General Merchandise Management. Licensee shall be responsible for determining the merchandise, assortment and strategies to be employed in operating the Business, which shall be set forth in a quarterly merchandise plan (the **"Quarterly Merchandise Plan"**) for the Business for each Fiscal Quarter of Licensee during the Term. At least one (1) Retail Month prior to the beginning of each Fiscal Quarter, Licensee shall prepare and submit to TDSF the Quarterly Merchandise Plan for the upcoming Fiscal Quarter (except that the Quarterly Merchandise Plan for the first (1st) Fiscal Quarter shall be prepared and submitted within one (1) Retail Month after the Effective Date). The Quarterly Merchandise Plan shall in all cases contain one (1) or more SKUs of Disney Merchandise within each of the three (3) Pre-Approved Merchandise Categories, and any proposed Disney Merchandise that does not fall within one of the three (3) Pre-Approved Merchandise Categories or an Additional Merchandise Category shall require the prior written approval of TDSF in its sole discretion pursuant to Section 9.19.3. Licensee shall consider in good faith any comments or suggestions of TDSF with respect to each Quarterly Merchandise Plan. Each Quarterly Merchandise Plan shall set forth information with respect to merchandise categories and assortment, including detailed Disney Merchandise lists by SKU, that Licensee proposes to employ in operating the Business for the upcoming Fiscal Quarter and such other information relating to the Disney Merchandise proposed to be offered for sale in the Facilities and the Internet Store as will be reasonably necessary, or as TDSF may reasonably request, to allow TDSF to make an informed judgment and appraisal of each Quarterly Merchandise Plan. Any material variations from any Quarterly Merchandise Plan for any Fiscal Quarter shall also be submitted to TDSF and, if any such change contemplates the addition of Disney Merchandise that does not fall within one of the three Pre-Approved Merchandise Categories or an Additional Merchandise Category, such change shall also be subject to TDSF's prior written approval in its sole discretion pursuant to Section 9.19.3. Licensee shall be entitled to determine product pricing and inventory levels of Disney Merchandise in its sole discretion.

9.6.2 Disney Dollars. TDSF and/or certain of its Affiliates have issued and/or may in the future issue Disney Dollars, which can be redeemed for or used as a method of payment to purchase a variety of products and services offered by TDSF and its Affiliates. In connection with any and all Disney Dollars, Licensee agrees that it shall, in accordance with TDSF's instructions:

(a) Accept and honor, as a valid method of payment, at their face value, throughout all of the Facilities (other than the Facilities located in Canada (unless otherwise determined by TDSF) and excluding the Internet Store), for all Disney Merchandise offered therein (or such portion thereof as may be designated by TDSF from time to time), any and all Disney Dollars, and install, maintain, support, modify and administer such information technology and systems at or for the Facilities as may be reasonably requested by TDSF in order to enable the processing of transactions with Disney Dollars at such Facilities;

(b) Issue, throughout all of the Facilities (except for Facilities located in Canada (unless otherwise determined by TDSF) or as otherwise specified in writing by TDSF in its sole discretion), at face value, Disney Dollars in denominations of One Dollar ($1), Five Dollars ($5) and Ten Dollars ($10), and such additional denominations (e.g., collectible denominations such as Fifty Dollars ($50)) as TDSF may designate from time to time, and install, maintain, support, modify and administer such information technology and systems at or for the Facilities as may be reasonably requested by TDSF in order to enable the issuance of such Disney Dollars at the Facilities;

(c) Maintain an adequate inventory of Disney Dollars to satisfy consumer demand therefor throughout the Facilities and report to TDSF or its designated Affiliate, within twenty (20) Business Days following the end of each fiscal month of TDSF, the amount of such inventory of Disney Dollars maintained by Licensee as of the end of such fiscal month of TDSF. The sufficiency of the amount of such inventory of Disney Dollars maintained by Licensee shall be determined in good faith consultation with TDSF and shall be subject to TDSF's approval in its business judgment. Such inventory of Disney Dollars shall exclude any Disney Dollars accepted from customers at the Facilities as a method of payment for Disney Merchandise in the Facilities, all of which shall be cancelled and returned by Licensee to TDSF or its designated Affiliate (i.e., Disneyland Resort Currency Services) on a monthly basis in accordance with procedures determined by TDSF in its business judgment. With respect to such Disney Dollars that are redeemed at the Facilities, cancelled and returned by Licensee to TDSF or its Affiliates, (i) TDSF or its Affiliates shall, at their election in their sole discretion, either (x) grant Licensee a credit against future purchases of Disney Dollars hereunder equal to the face amount of such redeemed, cancelled and returned Disney Dollars, or (y) on a monthly basis pay Licensee in cash an amount equal to the face amount of such redeemed, cancelled and returned Disney Dollars via wire transfer to an account of Licensee designated by it, and (ii) TDSF or its Affiliates shall reimburse Licensee for its reasonable, out-of-pocket, documented costs incurred in returning such Disney Dollars to TDSF or its designated Affiliate so long as Licensee shall use a shipping service approved by TDSF in its business judgment;

(d) Purchase Licensee's inventory of Disney Dollars at face value from TDSF or its designated Affiliate (i.e., Disneyland Resort Currency Services). Upon receipt of an order for Disney Dollars from Licensee, TDSF or its designated Affiliate will deliver to Licensee a written invoice setting forth (i) the quantity, denominations and serial numbers of the Disney Dollars ordered and (ii) the aggregate face value thereof. Licensee shall pay each such Disney Dollar invoice within five (5) Business Days of receipt thereof via wire transfer of same day funds to an account designated by TDSF or its designated Affiliate, whereupon the Disney Dollars that are covered by such Disney Dollar invoice shall be shipped to Licensee, at the expense of TDSF or its Affiliates, and no shipment thereof shall occur until such payment in full has been received by TDSF or its designated Affiliate;

(e) Participate from time to time in marketing, advertising or promotional activities pertaining to the acquisition and usage of Disney Dollars, including, without limitation, the display of signage at point-of-sale locations in all Facilities advertising the sale of Disney Dollars at each such Facility, the form, manner, location and all other elements of such signage to be determined by TDSF in its sole discretion; provided that, with respect to marketing, advertising or promotional activities (other than the point-of-sale signage described above) under this subparagraph (e) in which Licensee is required to participate without its approval or consent, TDSF shall, or shall cause its Affiliates or a third Person to, reimburse Licensee for all documented, out-of-pocket, direct advertising costs and expenses (specifically excluding agency fees or any imputed costs) incurred by Licensee as a result of such marketing, advertising or promotional activities (e.g., the cost of in-store collateral materials, newspaper advertising placements, billboards);

(f) Provide to TDSF and its Affiliates, within twenty (20) Business Days following the end of each month, information regarding the volume of Disney Dollars issued and redeemed at the Facilities during such month;

(g) Not use any of the creative design or production elements of the Disney Dollars, all of which shall be retained in their entirety by TDSF and/or its Affiliates, nor offer any certificate, currency, form of payment or other instrument that is comparable to or that competes with the Disney Dollars; and

(h) Take or refrain from taking such additional actions as TDSF may reasonably request in connection with the issuance and acceptance of Disney Dollars (provided that, if any such additional actions result in the imposition on Licensee of any obligations materially more onerous than those set forth in the preceding subparagraphs (a) through (g), inclusive, TDSF shall reimburse Licensee for its actual, reasonable costs and expenses incurred or suffered as a result thereof).

9.6.3 Merchandise Sharing Obligations.

(a) Obligations of Licensee. Upon request, Licensee and its Affiliates shall make available (by selling or arranging for the Manufacturers to supply) Disney Merchandise to Affiliates of TDSF and to Japan Disney Store Operators at such fair-market prices and/or royalty rates and other customary terms and conditions as shall be negotiated by the parties to such transactions in good faith; provided, that, upon Licensee's request, if its obligations under this Section 9.6.3(a) with respect to Japan Disney Store Operators are causing a material disruption in the operation of the Business by Licensee, TDSF shall use commercially reasonable efforts (other than the expenditure of money) to reduce the extent to which Licensee is required to perform such obligations as necessary in order to alleviate such material disruption of Licensee's operation of the Business. In addition, in the event that Licensee requests to purchase Other Disney Store Merchandise (other than Japan Disney Store Merchandise) from Other Disney Store Operators (other than Japan Disney Store Operators) and such Other Disney Store Operators agree to do so, Licensee and its Affiliates shall, upon request, make available (by selling or arranging for the Manufacturers to supply) Disney Merchandise to such Other Disney Store Operators at such fair-market prices and/or royalty rates and other customary terms and conditions as shall be negotiated by the parties to such transactions in good faith. Nothing herein shall prohibit or be deemed to prohibit Licensee from making available (by selling or arranging for the Manufacturers to supply) Disney Merchandise to Other Disney Store Operators at Licensee's election, except to the extent that TDSF or any of its Affiliates have prohibited or not approved the offer for sale, sale, marketing, advertising or promotion of such Disney Merchandise outside of the Territory.

(b) Obligations of TDSF. TDSF and its Affiliates shall use commercially reasonable efforts (other than the expenditure of money) to cause (i) Japan Disney Store Operators to make available (by selling or arranging for their manufacturers to supply) Japan Disney Store Merchandise to Licensee, (ii) Other Disney Licensees within the Territory to make available (by selling or arranging for their manufacturers to supply) Other Licensee Merchandise to Licensee, (iii) BVHE to make available (by

selling or arranging for its manufacturer to supply) home video products (which includes DVDs and other comparable new technologies that may be developed in the future for the home viewing of film properties) ("**BVHE Merchandise**") to Licensee and (iv) upon Licensee's request and subject to Licensee's compliance with its obligations under the second sentence of Section 9.6.3(a), Other Disney Store Operators (other than Japan Disney Store Operators) to make available (by selling or arranging for their manufacturers to supply) Other Disney Store Merchandise (other than Japan Disney Store Merchandise) to Licensee, in each case under the preceding subparagraphs (i), (ii), (iii) and (iv) at such fair-market prices and/or royalty rates and other customary terms and conditions as shall be negotiated by the parties to such transactions in good faith but, in the case of the preceding subparagraph (iii), subject to Section 9.6.5. Before Licensee may offer for sale, sell, market, advertise or promote any such Other Disney Store Merchandise (including Japan Disney Store Merchandise), Other Licensee Merchandise or BVHE Merchandise, Licensee must first obtain all approvals with respect to such merchandise that are required pursuant to this Agreement (including, without limitation, the approval provisions contained in Section 5). Licensee acknowledges and agrees that, notwithstanding the fact that TDSF or any of its Affiliates previously may have approved the sale of Other Disney Store Merchandise (including Japan Disney Store Merchandise), Other Licensee Merchandise or BVHE Merchandise by an Other Disney Store Operator (including a Japan Disney Store Operator), an Other Disney Licensee or BVHE, as the case may be, TDSF shall be entitled to determine, in its sole discretion, subject to Section 5.1.3(h), whether any such merchandise may be offered for sale, sold, marketed, advertised or promoted by Licensee as Disney Merchandise through the Facilities and/or the Internet Store under this Agreement. Any Other Disney Store Merchandise (including Japan Disney Store Merchandise), Other Licensee Merchandise or BVHE Merchandise that is approved by TDSF hereunder and that, after obtaining TDSF's approval hereunder, Licensee offers for sale, sells, markets, advertises or promotes in accordance with this Section 9.6.3(b) and the other provisions of this Agreement shall be deemed to be Disney Merchandise for purposes of this Agreement.

(c) Availability of Merchandise Designs. Licensee shall endeavor to make available for review and use by Affiliates of TDSF, Japan Disney Store Operators and, if applicable, Other Disney Store Operators (other than Japan Disney Store Operators) the merchandise designs of any Disney Merchandise made available by Licensee pursuant to Section 9.6.3(a) (in each case subject to reasonable confidentiality undertakings), and TDSF and its Affiliates shall endeavor to cause Japan Disney Store Operators, Other Disney Licensees within the Territory, BVHE and, if applicable, Other Disney Store Operators (other than Japan Disney Store Operators) to make available for review and use by Licensee the merchandise designs of any Other Disney Store Merchandise (including Japan Disney Store Merchandise), Other Licensee Merchandise or BVHE Merchandise made available to Licensee pursuant to Section 9.6.3(b) (in each case subject to reasonable confidentiality undertakings).

9.6.4 Product Warranties. Each of TDS USA and TDS Canada, jointly and severally, hereby warrants to TDSF and its Affiliates and to each customer of Licensee, with respect to all Disney Merchandise or other consumer products or merchandise developed, manufactured or offered for sale by TDS USA and/or TDS Canada, that each of such Disney Merchandise and other products and merchandise (i) shall be manufactured and assembled in compliance with all applicable Laws and the terms of this Agreement, (ii) shall contain all instructions, warnings, labels and other materials as may be required by applicable Laws, (iii) shall be of good quality and fit for its intended use by consumers, (iv) shall be free from any defect in design, material or workmanship, (v) shall not be misbranded, adulterated or unsafe within the meaning of any applicable Laws, and (vi) shall comply in all respects with all applicable Laws, including, without limitation, all applicable Laws pertaining to articles, materials or substances banned from commerce into or within the Territory. In addition, to the extent Licensee obtains any product warranty from any manufacturer or vendor of Disney Merchandise or other consumer products developed, manufactured or offered for sale by Licensee at the Facilities and/or the Internet Store, Licensee shall also obtain such warranty for the benefit of TDSF and its Affiliates in each instance and, in any case when Disney Merchandise is acquired by Other Disney Store Operators, for the benefit of such Other Disney Store Operators as well.

9.6.5 Purchase of Home Entertainment Products. In the event that Licensee requests to purchase any digital video discs, home videos or other home entertainment products from TDSF or its Affiliates (including, without limitation, BVHE), TDSF shall, or shall cause its Affiliates to, make available (by selling or arranging for its or their manufacturers to supply) such digital video discs, home videos or other home entertainment products to Licensee on terms and conditions that are reasonably comparable to those offered by TDSF or its Affiliates to similarly situated retailers with respect to digital video discs, home videos or other home entertainment products purchased by such similarly situated retailers in similar quantities, which terms and conditions may include, to the extent Licensee qualifies therefor based on criteria applicable to such similarly situated retailers, the availability of certain credit terms, volume discounts and other similar benefits, in each case in accordance with applicable Laws; provided that, TDSF shall cause BVHE (or such other Affiliate of TDSF as TDSF shall designate in its sole discretion) to provide for payment of each invoice for such digital video discs, home videos and other home entertainment products by Licensee within sixty (60) days (as opposed to any shorter period that would otherwise be applicable to Licensee).

9.6.6 Disposition of Defective Merchandise. Notwithstanding anything to the contrary contained herein (other than provisions relating to the sale of slightly irregular Softlines of Disney Merchandise pursuant to Section 6.3(i)(c)), any Disney Merchandise or other consumer products or merchandise developed, manufactured or offered for sale by Licensee that are damaged or defective in any way shall be either: (i) destroyed by Licensee at its sole cost and expense or (ii) donated to a charitable organization selected by Licensee following Licensee’s consultation in good faith with TDSF; provided, that, with respect to subparagraph (ii) of this Section 9.6.6, Licensee shall (a) be solely responsible for ensuring that any such damaged or defective Disney Merchandise or other consumer products or merchandise so donated complies with product warranties and all applicable Laws, including, without limitation, consumer product safety regulations, and that any such donation complies with all applicable Laws, and (b) indemnify and hold harmless TDSF and its Affiliates for any failure of any such Disney Merchandise or other consumer products or merchandise or any such donation to so comply with such product warranties and applicable Laws, as applicable.

9.7 Covenants Relating to Real Property.

9.7.1 Conduct Relating to Leased Property.

(a) Obligations Under Leases. Licensee shall comply with all of its material duties and obligations under the terms of each Lease Agreement. To the extent Licensee has Knowledge thereof, Licensee shall promptly deliver written notice to TDSF of any action or non-action by the landlord or sublandlord of each Lease Agreement (the "**Landlord**") or any other party thereto that is, or would with the passage of time or the giving of notice or both become, a default under such Lease Agreement.

(b) Notices With Respect to Leased Properties. Licensee shall deliver to TDSF copies of (i) any material notices delivered to Licensee pursuant to a Lease Agreement from the Landlord or any other applicable party to a Lease Agreement, (ii) any other material correspondence received by Licensee from the Landlord relating to a Leased Property, and (iii) any material notices or correspondence delivered to Licensee from any third parties (including, without limitation, any Governmental Entities or insurance carriers) relating to a Leased Property. Such copies shall be delivered by Licensee to TDSF promptly and no later than ten (10) Business Days after receipt by Licensee. Licensee shall deliver to TDSF copies of (x) any material notices that Licensee delivers to the Landlord pursuant to a Lease Agreement, (y) any other material correspondence that Licensee delivers to the Landlord relating to a Leased Property and (z) any material notices or correspondence that Licensee delivers to any third parties (including, without limitation, any Governmental Entities or insurance carriers) relating to a Leased Property. Such copies shall be delivered by Licensee to TDSF promptly and no later than ten (10) Business Days after delivery of such documents to the Landlord or to any third party.

(c) Insurance With Respect to Leased Properties. Upon TDSF's request (made in TDSF's sole discretion), Licensee shall, within one (1) month following the Effective Date or the date of any Lease Extension Arrangement or New Business Property Lease Agreement, and from time to time as requested by TDSF, provide proof to TDSF that Licensee is maintaining sufficient insurance with respect to all Lease Agreements by delivering to TDSF true, complete and current copies of its insurance policies or certificates of insurance in form and content reasonably satisfactory to TDSF. Licensee shall also deliver to TDSF all notices it receives from its insurance providers that relate to the type of coverage, the amount of coverage or termination of coverage promptly and no later than ten (10) Business Days after receipt by Licensee. In addition, Licensee shall name TDSF and its Affiliates as additional insureds under its comprehensive general liability insurance policy for each Leased Property or, if the Landlord carries such insurance and if practicable through the exercise of Licensee's commercially reasonable efforts, cause the Landlord to name TDSF and its Affiliates as additional insureds.

(d) Environmental Matters With Respect to Leased Properties. Licensee shall comply in all material respects with all applicable Environmental Laws with respect to each Leased Property and shall keep each Leased Property free from any Hazardous Substances.

(e) Notification and Summary of Proposed Lease Agreements. At least five (5) Business Days prior to entering into any Lease Agreement with a Landlord, Licensee shall provide to TDSF written notice of its intention to enter into such Lease Agreement (the "**Proposed Lease Agreement Notice**"), which Proposed Lease Agreement Notice shall include (i) the name and address of the Landlord and (ii) a summary of the material terms of such Lease Agreement, consisting of the term thereof, Licensee's rental obligations (including base rent, percentage rent and common area maintenance charges or comparable payments if designated by a different name), a statement of aggregate capital expenditure obligations thereunder, any other forms of consideration to be provided to the Landlord by Licensee, termination rights, any rights arising in connection with a change of control transaction, and any rights of TDSF (or purported obligations of TDSF) arising thereunder and the enforcement mechanisms associated therewith, in the form of Schedule 9.7.1(e). In the event that such material terms are not satisfactory to TDSF in its business judgment, TDSF shall provide to Licensee written notice of its objections to such terms within five (5) Business Days following the Proposed Lease Agreement Notice and such objections immediately shall be submitted to (x) the President of TWDC's Consumer Products Division or, at TDSF's option, the President of TWDC (or, if no person holds either such title, a senior executive officer of TWDC performing a similar function) and (y) the Chief Executive Officer of Licensee (or, if no person holds either such title, a senior executive officer of such entity performing a similar function) or, at TDSF's option, the Board of Licensee, who shall negotiate in good faith with one another in an effort to resolve the dispute, provided, that, notwithstanding any such objection by TDSF and prior to resolution thereof, Licensee shall be entitled to enter into the proposed Lease Agreement on the terms set forth in the Proposed Lease Agreement Notice so long as such proposed Lease Agreement complies with all of the other requirements set forth in this Agreement with respect to Lease Agreements, including, without limitation, Section 9.19.4. Notwithstanding anything to the contrary herein, this Section 9.7.1(e) shall not apply to, and Licensee shall not be required to provide a Proposed Lease Agreement Notice with respect to, any amendment or modification to a then existing Lease Agreement unless such amendment or modification relates to or affects any of the material terms of such existing Lease Agreement as set forth in subparagraph (ii) of this Section 9.7.1(e).

(f) Limited Termination Rights of Licensee. Except in connection with Permitted Closings as to which all of the requirements set forth in, and any TDSF approvals required by, this Agreement have been complied with and/or obtained and in connection with which, in the case of a Disney-Guaranteed Lease, Licensee has obtained a full and final release of TDSF and its Affiliates from any and all obligations with respect to the applicable Facility (whether under the terms of the applicable Lease Agreement, by operation of law, or otherwise) in a form satisfactory to TDSF in its sole discretion, Licensee shall not exercise any termination rights that Licensee may have under a Lease Agreement (including, without limitation, termination rights following a casualty or condemnation) without first obtaining TDSF's written approval in its sole discretion, which approval shall be sought in accordance with the approval provisions set forth in Section 9.19.1 or 9.19.3, as applicable.

(g) TDSF Termination Rights With Respect to Disney-Guaranteed Leases. Following the date that is three (3) months after the Subsequent Closing Date (or, if no Subsequent Closing occurs, following the date that is three (3) months after the expiration of the Subsequent Closing Period), with respect to any Leased Property as to which TDSF or any of its Affiliates is an obligor or guarantor or is otherwise liable under the applicable Lease Agreement (whether under the terms of the applicable Lease Agreement, by operation of law, or otherwise) (each, a "**Disney-Guaranteed Lease**," which, in any event, shall be deemed to include all Lease Agreements assigned to Licensee upon or in connection with the Subsequent Closing), TDSF may, in its sole discretion, require Licensee to exercise any right of termination that Licensee may have under such Disney-Guaranteed Lease, unless Licensee is able to obtain a full and final release of TDSF and its Affiliates from any guarantee or other obligations under such Disney-Guaranteed Lease in a form satisfactory to TDSF in its sole discretion. If a termination right arises under any Disney-Guaranteed Lease, then (x) Licensee shall promptly notify TDSF in writing of such termination right and the time period during which it may be exercised and any limitations relating thereto, and (y) TDSF may notify Licensee of its election to terminate such Disney-Guaranteed Lease at any time during the period in which Licensee is entitled to exercise its termination right under such Disney-Guaranteed Lease. Upon such notice by TDSF to Licensee, Licensee shall promptly terminate such Disney-Guaranteed Lease.

(h) Expiring Disney-Guaranteed Leases. Following the date that is three (3) months after the Subsequent Closing Date (or, if no Subsequent Closing occurs, following the date that is three (3) months after the expiration of the Subsequent Closing Period), with respect to any Disney-Guaranteed Lease, Licensee shall not enter into any Lease Extension Arrangement or operate the applicable Facility beyond the expiration date of the Original Lease Term of such Disney-Guaranteed Lease (including, without limitation, by establishing a month-to-month tenancy), unless Licensee has obtained from the Landlord a full and final release of TDSF and its Affiliates from any guarantee or other obligations under such Disney-Guaranteed Lease in a form satisfactory to TDSF in its sole discretion.

(i) Acquisition of Lease Agreements from Bankruptcy. Licensee shall be permitted to acquire Lease Agreements in proceedings under the Federal Bankruptcy Code or any other applicable bankruptcy Law, subject in each case to all of the requirements set forth in, and any TDSF approvals required by, this Agreement, including, without limitation, this Section 9.7.1 and Section 9.19, and to approval of the applicable bankruptcy court and compliance with all applicable bankruptcy and other Laws.

(j) Assignment and Subletting. Licensee and its Subsidiaries may not Transfer all or any part of a Leased Property (i) to TCP or any of its Affiliates (other than Licensee) without TDSF's prior written approval in its sole discretion, or (ii) to any other Person without TDSF's prior written approval in its business judgment; provided, that, with respect to this subparagraph (ii), if TDSF and its Affiliates have no liability with respect to such Leased Property under applicable Law or under Contract as determined by TDSF, or if Licensee is able to obtain a full and final release of TDSF and its Affiliates from any and all obligations with respect to such Leased Property (whether under the terms of the applicable Lease Agreement, by operation of law, or otherwise) in a form satisfactory to TDSF in its sole discretion in connection with such Transfer, TDSF's approval shall not be required with respect to such Transfer unless, at the time of such Transfer, there are outstanding ten (10) or more Leased Properties that have been Transferred by Licensee or its Subsidiaries without the approval of TDSF pursuant to this subparagraph (ii) of this Section 9.7.1(j), in which case such Transfer shall be subject to TDSF's prior written approval in its business judgment. Any approval of TDSF required pursuant to this Section 9.7.1(j) shall be sought in accordance with the approval provisions set forth in Section 9.19.3. In the event of any Transfer by Licensee or its Subsidiaries of all or any part of a Leased Property to TCP, any of its Affiliates or any other Person, Licensee shall provide TDSF with at least five (5) Business Days' advance written notice thereof, regardless of whether TDSF's approval is required in connection therewith pursuant to this Section 9.7.1(j).

(k) Limitations on Short-Term Leases. Licensee agrees that (i) during the period beginning on the sixtieth (60th) day after the Effective Date and ending on December 31, 2005, there shall be no more than seventy-five (75) Short-Term Leases for Core Stores in effect at any time, (ii) during the period beginning on January 1, 2006 and ending on December 31, 2007, there shall be no more than fifty (50) Short-Term Leases for Core Stores in effect at any time, and (iii) on and after January 1, 2008, no more than ten percent (10%) of the Facilities shall be leased pursuant to Short-Term Leases at any time; provided, that during the last three (3) Contract Years of the Initial Term or any Renewal Term, if the Term has not been renewed pursuant to Section 2.2 prior to the beginning of such three (3) Contract Year period, any Lease Agreement renewed during such three (3) Contract Year period may have a termination date that coincides with the expiration date of this Agreement.

(l) No Licensee Parent or Canadian Parent Guarantees. Without the prior written approval of TDSF in its sole discretion, Licensee shall not authorize or permit Licensee Parent or Canadian Parent, under any circumstances, to be or agree to be an obligor or guarantor, or to be or agree to be otherwise liable, under or with respect to (i) any Lease Agreement, (ii) any Leased Property or other Business Property or (iii) any other leased property (including, without limitation, any leased personal property) that was, is or will be used by Licensee relating to, or associated with, the Business or any lease or other Contract with respect thereto.

(m) Delivery of Executed Lease Agreements. Licensee shall deliver to TDSF a copy of all Lease Agreements entered into after the Effective Date promptly after their execution.

9.7.2 Conduct Relating to Other Real Property. Licensee shall not occupy, use or operate any Other Real Property in connection with the Business without the prior written approval of TDSF in its sole discretion, which approval shall be sought in accordance with the approval provisions set forth in Section 9.19.1. If such written approval is obtained with respect to any such Other Real Property, Licensee shall comply with each of the following provisions set forth in this Section 9.7.2 regarding such Other Real Property:

(a) Notices and Correspondence. Licensee shall deliver to TDSF copies of all material notices or other correspondence delivered to Licensee from any third parties (including, without limitation, any Governmental Entities or insurance carriers) relating to such Other Real Property. Such copies shall be delivered by Licensee to TDSF promptly, and no later than three (3) Business Days after receipt by Licensee. Licensee shall deliver to TDSF copies of any material notices or correspondence that Licensee delivers to any third parties (including, without limitation, any Governmental Entities or insurance carriers) relating to such Other Real Property. Such drafts shall be delivered by Licensee to TDSF promptly, and no later than three (3) Business Days after delivery of such documents to any third party.

(b) Insurance With Respect to Other Real Property. Licensee shall provide TDSF with proof that Licensee is maintaining that amount and type of insurance carried by similarly situated property owners or users, or both, of property that is similar to such Other Real Property and that is being used for similar purposes as such Other Real Property by delivering to TDSF true, complete and current copies of its insurance policies or certificates of insurance in form and content reasonably satisfactory to TDSF. Licensee shall also promptly deliver to TDSF all notices it receives from its insurance providers that relate to the type of coverage, the amount of coverage or termination of coverage for such Other Real Property. In addition, Licensee shall name TDSF as an additional insured on its comprehensive general liability insurance policy for such Other Real Property.

(c) Environmental Matters With Respect to Other Real Property. Licensee shall comply in all material respects with all applicable Environmental Laws with respect to such Other Real Property and shall keep such Other Real Property free from any Hazardous Substances.

(d) Transfers. Licensee may not Transfer such Other Real Property, or any part of it or any interest in it, (i) to TCP or any of its Affiliates (other than Licensee) without TDSF's prior written approval in its sole discretion, or (ii) to any other Person without TDSF's prior written approval in its business judgment. Any approval of TDSF required pursuant to this Section 9.7.2(d) shall be sought in accordance with the approval provisions set forth in Section 9.19.3.

9.8 Strategic Alliances.

9.8.1 General. TDSF and/or its Affiliates are currently parties to, and from time to time in the future will become parties to, certain strategic and corporate alliances with various unrelated third parties pertaining to, among other things, marketing, advertising and promotional arrangements, product supply and sourcing arrangements, and other comparable arrangements for the Theme Park, cruise line, media, entertainment and consumer products businesses of TDSF and its Affiliates, including, without limitation, the Co-Branded Credit Card Agreements (collectively, **"Strategic Alliances"**). Licensee acknowledges and agrees that, in connection with these Strategic Alliances, TDSF may from time to time exercise its approval rights under this Agreement, including with respect to Licensee's use of the Licensed Materials under Sections 4 and 5, to ensure TDSF's and/or its Affiliates' compliance with the terms of such Strategic Alliances. Licensee further agrees that, in the event that, following the Effective Date, TDSF and/or its Affiliates propose to enter into any new Strategic Alliance or amend or modify any existing Strategic Alliance, Licensee shall, upon TDSF's request (made in TDSF's sole discretion) and for such reasonable period of time as TDSF may request, engage in good faith negotiations with TDSF and/or its Affiliates regarding the terms and conditions (including, without limitation, separate compensation to Licensee) upon which Licensee, through the Business, the Facilities and/or the Internet Store, may engage in such Strategic Alliance together with TDSF and/or its Affiliates and the respective alliance party, provided, that TDSF shall be under no obligation whatsoever to make any such request (but rather may enter into any such Strategic Alliance or amendment or modification thereof without any consultation, discussion or negotiation with Licensee whatsoever) and that, if TDSF does make such request, each of Licensee and TDSF and/or its Affiliates shall be entitled to decide whether to enter into any such Strategic Alliance (and TDSF and/or its Affiliates shall be entitled to decide whether, if Licensee is willing, to include Licensee in such Strategic Alliance), in each case in its respective sole discretion, and may terminate such discussions at the end of the period reasonably requested by TDSF without recourse or remedy by the other party and without any abatement or reduction of any payments or other obligations hereunder. Any agreement reached under this Section 9.8.1 shall be memorialized in a separate written agreement. Licensee further agrees that, in connection with the operation of the Business, the Facilities and/or the Internet Store, it shall not, nor shall it permit its Affiliates to, enter into strategic or corporate alliances or any other marketing or promotional Contracts with any unrelated third parties or other Persons, whether with respect to any form of marketing, advertising and promotional arrangements, product supply and sourcing arrangements, or any other comparable arrangements, without the prior written consent of TDSF, to be obtained pursuant to the procedures set forth in Section 9.19.3 and to be granted or denied in TDSF's sole discretion.

9.8.2 **.

---

*** This information (consisting of a total of 4 pages) is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

9.8.3 **.

---

*** This information (consisting of a total of 2 pages) is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

9.8.4 Other Disney Cards and Non-U.S. Strategic Alliances. TDSF and/or its Affiliates are currently parties to, or from time to time in the future may become parties to, certain strategic and corporate alliances with various unrelated third parties pertaining to the issuance of credit and/or charge cards outside of the Territory or marketing, advertising and/or promotional

arrangements with respect to Payment Service Products outside of the Territory (collectively, **"Non-U.S. Strategic Alliances"**). To the extent that any of the Non-U.S. Strategic Alliances provide any such third parties with rights within the Territory (including, without limitation, rights with respect to acceptance of such cards as a method of payment at the Facilities and/or the Internet Store or marketing, advertising or promotional activities with respect to Payment Service Products related to the Facilities and/or the Internet Store), TDSF shall notify Licensee of such Non-U.S. Strategic Alliances and Licensee shall take or refrain from taking such actions as TDSF may reasonably request in order to ensure the compliance of TDSF and its Affiliates with the terms and conditions of such Non-U.S. Strategic Alliances; provided, that, in making any such request, TDSF (a) shall not impose on Licensee any obligations materially more onerous than those contained in the Co-Branded Card Agreements as they exist as of the Effective Date and as they are incorporated into the terms of Section 9.8.2 (or if any such obligations imposed on Licensee are materially more onerous, Licensee shall nonetheless comply therewith if such obligations can be reasonably quantified and alleviated by monetary compensation and TDSF agrees to reimburse Licensee for its actual, reasonable costs and expenses incurred or suffered in connection therewith), and (b) shall confirm to Licensee that such Non-U.S. Strategic Alliance shall not result in any such additional imposition as specified in the preceding subparagraph (a) (or that TDSF will reimburse Licensee for the actual, reasonable costs and expenses incurred or suffered by Licensee as a result of such imposition, if applicable). Licensee agrees that it will continue to be bound by the provisions of this Section 9.8.4 notwithstanding any amendment, modification, extension, renewal or replacement of any of the Non-U.S. Strategic Alliances, including, without limitation, any of the foregoing that may result in any credit and/or charge cards issued thereunder being issued by a different financial institution or that may arise from the Transfer of the portfolio of such credit and/or charge card accounts (in which event the new financial institution issuing such cards shall be treated for purposes of this Section 9.8.4 as if it were the original financial institution), provided, that, in each case, (i) any such amendment, modification, extension, renewal or replacement shall not result in the imposition on Licensee of any obligations materially more onerous than those contained in the Co-Branded Card Agreements as they exist as of the Effective Date and as they are incorporated into the terms of Section 9.8.2 (or if any such obligations imposed on Licensee are materially more onerous, Licensee shall nonetheless comply therewith if such obligations can be reasonably quantified and alleviated by monetary compensation and TDSF agrees to reimburse Licensee for its actual, reasonable costs and expenses incurred or suffered in connection therewith), and (ii) TDSF shall promptly notify Licensee of any such amendment, modification, extension, renewal or replacement and confirm to Licensee that such amendment, modification, extension, renewal or replacement shall not result in any such additional imposition as specified in the preceding subparagraph (i) (or that TDSF will reimburse Licensee for the actual, reasonable costs and expenses incurred or suffered by Licensee as a result of such imposition, if applicable).

9.8.5 Other Strategic Alliance Arrangements. From time to time during the Term, upon TDSF's request, Licensee shall participate, in accordance with TDSF's instructions, in marketing, advertising or promotional activities pertaining to other Strategic Alliances with TDSF, its Affiliates and its Strategic Alliance partners; provided that, with respect to any such marketing, advertising or promotional activities in which Licensee is required to participate without its approval or consent, TDSF shall, or shall cause a third Person to, reimburse Licensee for all documented, out-of-pocket, direct advertising costs and expenses incurred by Licensee as a result of such marketing, advertising or promotional activities (e.g., the cost of in-store collateral materials, newspaper advertising placements, billboards).

9.8.6 Introductions to Strategic Alliance Parties. From time to time, but not more often than three (3) times per Contract Year unless otherwise agreed to by the parties in their respective sole discretion, Licensee may request that TDSF and/or its Affiliates arrange for the introduction of Licensee to representatives of any of the various unrelated third parties with whom TDSF and/or its Affiliates have entered into major, multi-business unit, corporate strategic alliances. Upon such request by Licensee, to the extent that TDSF and/or its Affiliates determine in their sole discretion that it is feasible and appropriate, TDSF and/or its Affiliates shall (i) arrange for such introduction and (ii) permit Licensee to participate in discussions with such representatives regarding the Facilities and the Internet Store (either with or without the participation of TDSF and/or its Affiliates, as determined by TDSF in its sole discretion).

9.9 Synergy Rights and Obligations.

9.9.1 Theme Park Admissions. Licensee shall procure from TDSF or its Affiliates and offer for sale and sell to retail customers in all of the Facilities (unless TDSF shall otherwise determine in its sole discretion) general admission tickets and passes and other admission media, if any, for Theme Parks owned, leased, licensed, controlled and/or operated by TDSF or its Affiliates, including, without limitation, WALT DISNEY WORLD® Resort and DISNEYLAND® Resort (**"Theme Park Admission Passes"**), at the prices and in accordance with the terms and conditions set forth on Schedule 9.9.1. The Theme Park Admission Passes shall only be available through the Facilities and not the Internet Store. Licensee shall not offer for sale or sell within the Facilities or the Internet Store or otherwise any admission tickets, passes or other media for any Theme Park that is not owned, leased, licensed, controlled and/or operated by TDSF or its Affiliates or that is not approved for sale by TDSF hereunder in its sole discretion.

9.9.2 Required Product. From time to time, at the request of TDSF or any of its Affiliates, Licensee shall offer for sale, sell, market, advertise and promote in the Facilities and the Internet Store such Other Disney Store Merchandise, Other Licensee Merchandise and other consumer products and merchandise that bear, feature or incorporate one (1) or more of the Disney Properties or other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or its Affiliates as TDSF or its Affiliates may select (collectively, the **"Required Product"**); provided, that Licensee shall not be required to offer for sale, sell, market, advertise or promote in the Facilities digital video discs or other home video products pursuant to this Section 9.9.2 (but, for purposes of clarification, Licensee may be required to offer for sale, sell, market, advertise or promote such products in the Internet Store pursuant to this Section 9.9.2). Notwithstanding anything to the contrary contained herein, TDSF shall determine, in its sole discretion, the Facilities and/or the Internet Store in which Required Product shall be so offered, the suggested retail price at which Required Product shall be so offered, the amount and volume of Required Product to be

offered and the amount of space within each Facility and in the Internet Store to be used for display and/or marketing and advertising of Required Product, provided, that (i) the aggregate amount of space within each Facility that TDSF may require Licensee to use for display and/or marketing and advertising of Required Product (including, without limitation, shelf space, end cap space, point-of-sale space, window display space and other store display space) shall not exceed the amounts set forth in Schedule 9.9.2 unless otherwise requested or approved by Licensee, (ii) Licensee shall be entitled to discontinue the offer and sale of any SKU of Required Product in the Facilities and/or the Internet Store in the event that such SKU of Required Product shall fail to achieve an inventory turn rate of at least one hundred percent (100%) during any fifteen (15) week period following its introduction at the Facilities and/or the Internet Store, as applicable (provided, that Licensee shall determine such inventory turn rate in accordance with past practice and shall provide TDSF with a reasonably detailed, written calculation thereof that is satisfactory to TDSF in its business judgment) and, in any event, Licensee may cease to offer and sell any SKU of Required Product in the Facilities and/or the Internet Store on the date that is three (3) Retail Months following its introduction at the Facilities and/or the Internet Store, as applicable, and (iii) regardless of the price at which Licensee elects to sell Required Product (which Licensee may determine in its sole discretion), the Monthly Royalty Amounts for Required Product shall be based on the greater of (x) the actual selling price of such Required Product or (y) the suggested retail price for the Required Product as determined by TDSF in accordance with this Section 9.9.2. TDSF further agrees that, except as Licensee may otherwise agree, the initial suggested retail price for Required Product at the Facilities and/or the Internet Store shall provide for a gross margin on the sale of such Required Product at least equal to the average gross margin earned by Licensee during the most recently completed twelve (12) Retail Months for the category of merchandise into which such Required Product falls, as calculated by Licensee in good faith and certified in writing by Licensee to TDSF. Licensee shall determine the manner in which any Required Product will be marketed and advertised in the Facilities, the Internet Store and/or in the general marketplace, subject to the approval of TDSF in its business judgment. Any Required Product that Licensee offers for sale, sells, markets, advertises or promotes in accordance with this Section 9.9.2 shall be deemed to be Disney Merchandise for purposes of this Agreement.

9.9.3 Advance Preview of Motion Picture Properties and Television Properties. At least eighteen (18) months prior to the beginning of each calendar year during the Term (the calendar year to which a presentation under this Section 9.9.3 relates is referred to for purposes of this Section 9.9.3 as a **"Release Year"**), or, if earlier, prior to or at approximately or near the same time prior to a Release Year as such presentations are made to other major consumer products licensees of TDSF and its Affiliates, at TDSF headquarters at such times as the parties shall mutually agree, TDSF or its Affiliates shall present to Licensee a general description of (including, to the extent available, story summaries, story boards, style guides, film clips, character drawings or animations and/or other artwork relating to) those Motion Picture Properties and Television Properties that (i) feature or incorporate one (1) or more of the Disney-Branded Properties or Non-Disney-Branded Properties (or any properties that TDSF believes may be designated as Non-Disney-Branded Properties hereunder), and (ii) are scheduled for release or distribution during such Release Year; provided, that, with respect to the first (1st) calendar year and, if there are not at least eighteen (18) months between the Effective Date and the beginning of the second (2nd) calendar year, then also with respect to the second (2nd) calendar year, TDSF or its Affiliates shall make the presentation required by this Section 9.9.3 with respect to the applicable Motion Picture Properties and Television Properties as soon as reasonably practicable following the Effective Date. During each such presentation, TDSF shall use its commercially reasonable efforts to provide information regarding the relative popularity of the Disney Properties featured in such presentation based upon ticket sales for the applicable Motion Picture Properties, Nielsen ratings for the applicable Television Properties or other comparable publicly available data to the extent available to TDSF in the ordinary course of business. Following such initial presentation, during meetings held at TDSF headquarters on a quarterly basis at such times as the parties shall mutually agree, TDSF or its Affiliates shall provide Licensee with updates regarding material changes to the matters covered by each such initial presentation and shall, upon Licensee's request, provide Licensee with an opinion regarding Licensee's ideas for the merchandising and/or promotion in the Facilities and the Internet Store of the Disney Properties featured in such initial presentation or quarterly update. Notwithstanding the foregoing, TDSF and its Affiliates shall not be required to disclose to Licensee any information that they are prohibited from disclosing pursuant to any Contract binding on TDSF or its Affiliates or any of their properties, applicable Law or the rules and regulations of any stock exchange on which TDSF's or any of its Affiliates' Securities are traded.

9.9.4 Coupons of TDSF and its Affiliates. Licensee shall accept and honor, as a valid method of payment, throughout all of the Facilities and, as and to the extent requested by TDSF and to the extent reasonably practicable, the Internet Store, for all Disney Merchandise offered therein (or such portion thereof as may be designated by TDSF from time to time), any coupon or comparable instrument offered by TDSF or any of its Affiliates (e.g., Walt Disney Records, Buena Vista Home Entertainment); provided, that, with respect to any Disney Merchandise purchased at the Facilities or the Internet Store with any such coupon or instrument, TDSF or its Affiliates shall reimburse Licensee an amount equal to the Purchase Price of such Disney Merchandise on such date, minus any applicable sales Tax paid separately by the customer by means other than the coupon or comparable instrument, discounts, rebates, refunds, credits, allowances, adjustments and product returns, such reimbursement to be made on a monthly basis within twenty (20) Business Days following Licensee's delivery to TDSF of a reasonably detailed invoice therefor.

9.9.5 Acceptance of Returned Merchandise From the Other Party's Stores. Licensee shall, at the Facilities, accept merchandise that was purchased by a customer from any TDSF Flagship Store (including, as applicable, the El Capitan), any Designated WDW Store, any Disney Retained Store (including, as applicable, the El Capitan), any retail store described in Section 6.1.3, the DDM Business or any other store (other than an Outlet Store or a Temporary Liquidation Store, which shall be differentiated from other merchandise based on the sales receipt) offering merchandise that bears, features or incorporates Disney-Branded Properties and that is owned, leased, licensed, controlled and/or operated by TDSF or its Affiliates or by a third party on their behalf within the Territory (each, a "**TDSF/Affiliate Store**") and that the customer requests to return at the Facility for a refund (a "**Licensee Reciprocal Return**"), and TDSF and its Affiliates shall, at the TDSF/Affiliate Stores (other than the DDM Business), accept Disney Merchandise that was purchased by a customer from a Facility or the Internet Store and that the customer

requests to return at the TDSF/Affiliate Store for a refund (a "**Disney Reciprocal Return**"), in each case in accordance with the following:

(a) Each Facility and each TDSF/Affiliate Store shall be entitled to and shall comply with its own ordinary course return policies (e.g., pertaining to the required condition of the merchandise, the availability of a sales receipt, the permitted time period for returns, etc.) in connection with the acceptance of any merchandise pursuant to a Licensee Reciprocal Return or a Disney Reciprocal Return, respectively, and any attempted return of merchandise that does not comply with such applicable return policies may be rejected by such store. Customers whose returns are so rejected shall be informed that their return of merchandise does not comply with the store's return policy and shall be directed to the store at which such merchandise was purchased if they have additional inquiries.

(b) TDSF shall, or shall cause its Affiliates to, reimburse Licensee for all Licensee Reciprocal Returns, and Licensee shall reimburse TDSF for all Disney Reciprocal Returns, in each case in the full amount paid by the applicable party to the customer who returned the merchandise. Within twenty (20) Business Days following the end of each Retail Month during the Term, each of Licensee and TDSF shall deliver a written invoice to the other party for the aggregate amount of Licensee Reciprocal Returns and Disney Reciprocal Returns, respectively, incurred during the preceding Retail Month, which invoices shall be due and payable within twenty (20) Business Days following delivery thereof. Payments shall be made by wire transfer of immediately available funds to accounts designated by Licensee and TDSF.

(c) On a Retail Monthly basis, all returnable merchandise (i.e., excluding merchandise for which the original receipt is marked as "non-refundable") with a retail price of One Hundred Twenty Five Dollars ($125) or more collected in connection with merchandise returns under this Section 9.9.5 shall be returned to TDSF or Licensee, as the case may be, at the cost of the original selling party, via bulk mail to a single address to be designated by TDSF or Licensee, as the case may be, and all merchandise with a retail price of less than One Hundred Twenty Five Dollars ($125) collected in connection with such returns shall be either (i) clearly marked as "customer return" and sold in the applicable store, with the net proceeds of such sale to be netted against any reimbursements owed under this Section 9.9.5 to the selling party by the party entitled to receive such returned merchandise, or (ii) destroyed by the party who receives such returned merchandise.

9.9.6 No Limitation on Premiums by Third Parties. Notwithstanding anything to the contrary contained herein, Licensee acknowledges and agrees that there shall be no limitation on the right of TDSF or its Affiliates to authorize any third Person, including, without limitation, Strategic Alliance associates, to create, develop, manufacture and distribute, as "premiums" on a free or promotional basis, consumer products that bear, feature or incorporate one (1) or more Disney Properties, notwithstanding the fact that such premiums may be distributed through retail venues or other comparable channels of distribution that may be competitive with the Business, the Facilities and the Internet Store.

9.9.7 Requests for Assistance; Access to Archives.

(a) Requests for Assistance. From time to time, Licensee may request that TDSF and/or its Affiliates provide or arrange for the provision of creative and/or developmental advice and/or assistance in connection with the operation of the Business. Upon such request by Licensee, if TDSF and/or its Affiliates determine, in their sole discretion based on their expertise in the applicable area, available resources, the complexity of the task and other factors that TDSF and/or its Affiliates may deem relevant, that it is feasible and appropriate to so provide or arrange for such advice and/or assistance, TDSF and/or its Affiliates shall use commercially reasonable efforts to do so. In the event that TDSF and/or its Affiliates so provide or arrange for such advice and/or assistance, Licensee shall reimburse TDSF and its Affiliates for their costs and expenses incurred in connection therewith in accordance with the Allocated Cost Methodology. TDSF and/or its Affiliates shall invoice Licensee monthly in arrears for the advice and/or assistance provided pursuant to this Section 9.9.7, and Licensee shall pay TDSF and/or its Affiliates for amounts due on each such invoice no later than twenty (20) Business Days following delivery of such invoice by TDSF and/or its Affiliates.

(b) Access to Archives and Website. To the extent that TDSF or any of its Affiliates maintains any Archives Location, TDSF shall, upon Licensee's request and during normal business hours, provide Licensee and/or its Representatives with reasonable access to such Archives Location and, in connection therewith, shall make available for consultation with Licensee the employee of TDSF or its Affiliates who is primarily responsible for maintaining or overseeing such Archives Location; provided, that TDSF shall not be required to provide Licensee such access or make available such employee on any date that is earlier than ten (10) Business Days after such request by Licensee or on more than three (3) occasions during any Contract Year (which, in the first (1st) Contract Year, will include the Stub Period). In addition, to the extent that TDSF or any of its Affiliates continue to maintain the licensee website located at www.disneylicensing.com (or any substantially similar replacement or successor website) and continue to provide access thereto to other major third party manufacturing licensees of TDSF or its Affiliates, TDSF shall provide Licensee with reasonable access thereto, subject to Licensee's execution and delivery to TDSF of an access agreement relating thereto in form and substance satisfactory to TDSF in its business judgment.

9.9.8 Cross-Marketing Opportunities. From time to time during the Term, upon the written request of either party, which request shall contain, to the extent reasonably practicable, a reasonably detailed proposal, each of TDSF and Licensee shall consider and negotiate in good faith for a period of twenty (20) Business Days (or such longer period of time as the parties may consent to in writing in their respective sole discretion) regarding proposals by the other party to engage in cross-marketing opportunities between or among the Facilities and the Business, TCP and its "Children’s Place" retail stores, and/or one (1) or more Affiliates or business units of TWDC, provided, that (i) any such cross-marketing opportunities shall be designed to provide approximately equal benefits to all parties participating therein, (ii) each party to any such negotiations shall be entitled to decide whether to enter into any such cross-marketing opportunity in its respective sole discretion and may terminate such good faith consideration or negotiation following such twenty (20) Business Day period without recourse or remedy by the other party and

without any abatement or reduction of any payments or other obligations hereunder, (iii) any agreement reached under this Section 9.9.8 shall be memorialized in a separate written agreement, and (iv) neither party shall be required to consider or negotiate more than four (4) cross-marketing proposals during any Contract Year (which, in the first (1st) Contract Year, will include the Stub Period).

9.9.9 Volume Discounts. From time to time, Licensee may request that TDSF and/or its Affiliates permit or arrange for Licensee to participate in or benefit from volume discounts or similar benefits that TDSF and/or its Affiliates may receive within the Territory pursuant to arrangements with major shipping vendors or overnight courier suppliers of TWDC (e.g., TWDC's major overnight courier service for deliveries in the United States). Upon such request by Licensee, TDSF and/or its Affiliates and Licensee shall explore in good faith the feasibility of extending to Licensee or otherwise allowing Licensee to participate in or benefit from any such arrangements, provided, that (i) any determination as to the feasibility of so extending such arrangements to Licensee or otherwise allowing Licensee to participate therein or benefit therefrom shall be made by TDSF and/or its Affiliates in their sole discretion without recourse or remedy by Licensee and without any abatement or reduction of any payments or other obligations of Licensee hereunder, and (ii) TDSF and/or its Affiliates shall not be required to explore the feasibility of so extending such arrangements to Licensee or otherwise allowing Licensee to participate therein or benefit therefrom on more than one (1) occasion during any Contract Year (which, in the first (1st) Contract Year, will include the Stub Period).

9.9.10 Reciprocal Benefits for Employees. During each Contract Year of the Term, TDSF or its Affiliates agree to provide each person (other than a Silver Pass Holder) who has been a Licensee Employee for a minimum of three (3) months with a total of three (3) complimentary one-day, one-park passes for admission for such Licensee Employee and two (2) guests of such Licensee Employee to a Theme Park located in the Territory and owned, leased, licensed, controlled and/or operated by or on behalf of TDSF and/or any of its Affiliates, in each case subject to the following: (i) in order for any Licensee Employee to obtain such Theme Park passes, Licensee shall be required to provide TDSF or its designated Affiliate with twenty (20) Business Days prior written notice setting forth the name of such Licensee Employee, the Theme Park that such Licensee Employee intends to visit, the date on which such Licensee Employee intends to visit such Theme Park and a statement certifying that such person is not a Silver Pass Holder and has been a Licensee Employee for at least three (3) months, and (ii) upon receipt of the notice pursuant to the preceding subparagraph (i), TDSF shall or shall cause its Affiliate to make the respective Theme Park passes available for pick-up at the applicable Theme Park on the date specified for the visit (subject to black-out periods or other comparable restrictions applicable to such complimentary Theme Park passes). Licensee shall be responsible for ensuring compliance with the foregoing procedures and for taking such steps as may be reasonably necessary to prevent any fraudulent or "gaming" behavior by Licensee Employees in connection with such Theme Park passes and any Silver Passes issued pursuant to Section 20.3 (i.e., Licensee Employees selling their Theme Park passes to other persons or providing them to other persons rather than using them for their own benefit). Commencing in the fourth (4th) Contract Year and on a periodic basis thereafter, TDSF and Licensee shall review in good faith such compliance procedures to determine their effectiveness and shall make such adjustments thereto as may be necessary in TDSF's business judgment to avoid any such misconduct or misuse of the Theme Park passes issued hereunder or otherwise to ensure that the procedures followed under this Section 9.9.10 are effective and efficient. In the event that, at any time during the Term, (i) Licensee ceases to provide employees of TDSF and its Affiliates with a discount of at least thirty percent (30%) on purchases of products within the Facilities and the Internet Store in the manner contemplated by Section 9.4.3, or (ii) TDSF and/or its Affiliates cease to provide such Theme Park passes to their employees for any reason, then in either such case TDSF shall be entitled in its sole discretion to immediately cease providing Theme Park passes to Licensee Employees pursuant to this Section 9.9.10 or otherwise.

9.9.11 Disney Gift Cards and Stored Value Cards. TDSF and/or certain of its Affiliates have issued and/or may in the future issue Gift Cards, including, by way of illustration and not limitation, a stored value card or gift card ("**Disney Stored Value Cards**"), by which customers can store (i.e., prepay) cash value that can be redeemed for or used as a method of payment to purchase a variety of products and services offered by TDSF and its Affiliates. In connection with any and all Gift Cards, including Disney Stored Value Cards, Licensee agrees that it shall:

(a) Participate from time to time, in accordance with TDSF's instructions, in marketing, advertising or promotional activities pertaining to the acquisition, activation, retention and usage of Gift Cards; provided that, with respect to marketing, advertising or promotional activities under this subparagraph (a) in which Licensee is required to participate without its approval or consent, TDSF shall, or shall cause the issuer or administrator of the respective Gift Card or any third Person to, reimburse Licensee for all documented, out-of-pocket, direct advertising costs and expenses incurred by Licensee as a result of such marketing, advertising or promotional activities (e.g., the cost of in-store collateral materials, newspaper advertising placements, billboards);

(b) In accordance with TDSF's instructions, (a) accept and honor, as a valid method of payment, throughout all of the Facilities and the Internet Store (except as otherwise specified by TDSF in writing), for all Disney Merchandise offered therein (or such portion thereof as may be designated by TDSF from time to time), any Gift Card, and (b) install, maintain, support, modify and administer such information technology and systems at or for the Facilities and the Internet Store as may be reasonably requested by TDSF in order to enable the processing of transactions with Gift Cards at the Facilities and the Internet Store in accordance with this Section 9.9.11; provided, that, with respect to any Disney Merchandise purchased at the Facilities or the Internet Store with a Disney Stored Value Card, TDSF or its Affiliates shall reimburse Licensee an amount equal to the Purchase Price of such Disney Merchandise on such date, minus (I) an amount equal to such percentage of such Purchase Price as TDSF or its Affiliates may determine from time to time in their sole discretion (such percentage, the "**Stored Value Card Fee Rate**" and such amount, the "**Stored Value Card Fee**"), provided, that the Stored Value Card Fee Rate (x) shall not exceed, by any material amount, the percentage of the Purchase Price of consumer products and merchandise purchased from third party licensees of TDSF or its Affiliates with a Disney Stored Value Card that is deducted from the amount reimbursable to such third party licensees, and

(y) with respect to Licensee, shall not in any event exceed two percent (2%) of the Purchase Price of the applicable Disney Merchandise on the applicable date, and (II) any applicable sales Tax paid separately by the customer by means other than the Disney Stored Value Card, discounts, rebates, refunds, credits, allowances, adjustments and product returns, such reimbursement to be made on a monthly basis within twenty (20) Business Days following Licensee's delivery to TDSF of a reasonably detailed invoice therefor;

(c) Upon TDSF's request, in accordance with TDSF's instructions, (i) issue, throughout all of the Facilities and, as applicable, the Internet Store, any Gift Card, (ii) install, maintain, support, modify and administer such information technology and systems at or for the Facilities and the Internet Store as may be reasonably requested by TDSF in order to enable the issuance of Gift Cards at the Facilities and, as applicable, the Internet Store in accordance with this Section 9.9.11, (iii) with respect to any Disney Stored Value Cards that are issued by Licensee, remit the proceeds thereof to such Affiliate of TDSF as TDSF shall designate from time to time, and (iv) with respect to any Gift Cards other than Disney Stored Value Cards that are issued by Licensee, remit the proceeds thereof in such manner as TDSF shall designate from time to time, in the case of each of subparagraphs (i), (ii), (iii) and (iv) on such terms as TDSF may reasonably request;

(d) Upon TDSF's request, provide (not more than once per Retail Month) to TDSF and its Affiliates information regarding the volume of purchases at the Facilities and the Internet Store made with Gift Cards, separately identifying Disney Stored Value Cards;

(e) If not done prior to the Effective Date, enter into a participation agreement, including, without limitation, a ValueLink Participation Agreement (or any amendment, modification or replacement thereof), pursuant to which Licensee shall participate in any Disney Stored Value Card program operated or administered by a third party, on such terms as TDSF and Licensee shall approve in their respective business judgment, such approval of TDSF to be obtained in accordance with Section 9.19.3;

(f) Comply with such program rules and regulations with respect to Gift Cards, including the Disney Stored Value Cards, as may be in effect from time to time during the Term; and

(g) Take or refrain from taking such additional actions as TDSF may reasonably request in connection with the issuance and acceptance of Gift Cards (provided that, if any such additional actions result in the imposition on Licensee of any obligations materially more onerous than those set forth in the preceding subparagraphs (a) through (f), inclusive, TDSF shall reimburse Licensee for its actual, reasonable costs and expenses incurred or suffered as a result thereof).

9.9.12 TDSF Reproduction Rights. Notwithstanding any other provisions of this Agreement, TDSF and its Affiliates shall have the royalty-free right, without obtaining the approval of Licensee, to photograph, take videos or motion pictures of, televise or otherwise reproduce in any manner or through any media (such photographs, videos, motion pictures, televising or other reproductions, collectively, "**Reproductions**") any of the Facilities, the Internet Store or any parts thereof for the general business or marketing purposes of TDSF and/or its Affiliates (e.g., a presentation to financial analysts that features a variety of the operations of TDSF and its Affiliates, such as their Theme Park and filmed entertainment businesses, together with information regarding the Facilities and the Internet Store). Such right shall include the right to use, on a royalty-free basis, Licensee’s and TCP’s name as the operator of the Facilities and the Internet Store. TDSF may display, use, sell, license or otherwise exploit any such Reproductions for any purpose, commercial or otherwise, both during the Term and after the expiration or earlier termination of this Agreement and all of the foregoing materials and all benefits and revenues obtained therefrom shall be the sole and exclusive property of TDSF and its Affiliates. Upon TDSF’s reasonable request, and at Licensee’s expense, Licensee shall use its commercially reasonable efforts to obtain, for TDSF’s benefit, releases, clearances or other instruments from any Licensee Employees or otherwise as may be necessary to permit TDSF to make and use or cause to be made and used any such Reproductions.

9.10 Access and Right to Cure.

9.10.1 Monitoring and Inspection. At any time and from time to time, during normal business hours, with or without notice to Licensee, TDSF, its Affiliates or its Representatives shall be entitled to inspect and monitor the Business Properties and, upon three (3) Business Days advance notice, interview a reasonable number of Licensee employees to ensure that the Business Properties are being maintained, and the Business is being conducted, and the Licensed Materials are being used, displayed and reproduced, in a high quality manner that is at least equal to the quality levels prevailing among full-priced specialty retail chains focused on children’s consumer products and in compliance with this Agreement, the Operating Manual, any applicable Lease Agreements and applicable Law, and Licensee shall provide TDSF, its Affiliates and its Representatives with access to all such Business Properties and personnel in order to enable TDSF, its Affiliates and its Representatives to conduct such inspection and monitoring. Such inspection may include, without limitation, review of customer surveys, the review of customer correspondence, such as complaints, with respect to Disney Merchandise and the operation of the Facilities and the Internet Store, and, upon three (3) Business Days advance notice, interviews with a reasonable number of Licensee employees and management. In connection with such inspections, TDSF shall use its commercially reasonable efforts not to disrupt in any material respect the day-to-day operations of Licensee or any Business Property being inspected.

9.10.2 TDSF Self-Help Cure. In the event that (a) TDSF determines that (i) the Business is being conducted, or any Business Property is being maintained, repaired, refurbished or operated, by Licensee in any manner that is not in strict compliance with this Agreement, the Operating Manual, the terms of any applicable Lease Agreement or any applicable Law, (ii) Licensee has committed any Licensee Infringing Use or other misuse of any of the names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or its Affiliates, (iii) Licensee is in material breach of any Lease

Agreement or other material Contract entered into by Licensee in connection with the operation of the Business, (iv) Licensee has materially breached any of its other obligations and duties under this Agreement or any other Contract with TDSF or its Affiliates entered into by Licensee in connection herewith (including, without limitation, any Royalty Breach), or (v) any other action or omission of Licensee at or with respect to any Facility, as identified and determined by TDSF in its sole discretion, requires corrective or remedial measures, even if such action or omission does not constitute non-compliance, infringement, misuse or breach as described under the preceding subparagraphs (i), (ii), (iii) and (iv), and (b) following written notice from TDSF to Licensee of any such non-compliance, infringement, misuse, breach, action or omission, Licensee shall fail to Cure or otherwise correct such non-compliance, infringement, misuse, breach, action or omission in a timely manner (which shall not exceed (A) in the case of the preceding subparagraph (i), (ii), (iii) or (iv), the lesser of any time period specified in this Agreement or twenty (20) Business Days following written notice if not so specified (and, if not so specified and such 20-Business-Day period applies, if such Cure or other correction cannot reasonably be accomplished to TDSF's satisfaction in its business judgment within such 20-Business-Day period, then Licensee shall in good faith have commenced such Cure or other correction within such 20-Business-Day period and shall thereafter have proceeded diligently to complete such Cure or other correction to TDSF's satisfaction in its business judgment within twenty-five (25) Business Days following such written notice from TDSF to Licensee) or (B) in the case of the preceding subparagraph (v), seven (7) Business Days following written notice (and, if such Cure or other correction cannot reasonably be accomplished to TDSF's satisfaction in its business judgment within such 7-Business-Day period, then Licensee shall in good faith have commenced such Cure or other correction within such 7-Business-Day period and shall thereafter have proceeded diligently to complete such Cure or other correction to TDSF's satisfaction in its business judgment within ten (10) Business Days following such written notice from TDSF to Licensee), then TDSF, its Affiliates and its Representatives shall have the right, but not the obligation, to correct or cure any such non-compliance, infringement, misuse, breach or other action or omission in such manner as TDSF shall deem appropriate in its sole discretion (each, a "**TDSF Self-Help Cure**"); provided, that TDSF shall not undertake any TDSF Self-Help Cure described in the preceding subparagraph (v) with respect to any action or omission that does not constitute non-compliance, infringement, misuse or breach hereunder on more than two (2) occasions during the Stub Period or more than five (5) occasions in any Contract Year. In connection with any such TDSF Self-Help Cure, Licensee shall, upon two (2) Business Days' written notice from TDSF, (x) provide TDSF, its Affiliates and Representatives with full access to any Business Property or Business Properties designated by TDSF for purposes of conducting such TDSF Self-Help Cure for so long as TDSF may require, (y) issue such directions and instructions to Licensee's employees, management, Affiliates, Representatives and Manufacturers as TDSF shall request in order to accomplish such TDSF Self-Help Cure and, if Licensee shall fail to issue any such directions or instructions within two (2) Business Days following TDSF's request, Licensee hereby designates TDSF as Licensee's true and lawful attorney-in-fact and agent, for Licensee and in Licensee's name, place and stead, in any and all capacities, to issue such directions and instructions to Licensee's employees, management, Affiliates, Representatives and Manufacturers, and (z) take such other actions as TDSF may request in order to enable TDSF to perform such TDSF Self-Help Cure. In addition to the foregoing, either party shall be entitled to refer any non-compliance, infringement, misuse or breach issues specified in subparagraph (i), (ii), (iii) or (iv) of this Section 9.10.2 to the Joint Advisory Committee, provided, that no decision of the Joint Advisory Committee with respect thereto shall in any manner limit the rights or duties of the parties hereunder. No action taken hereunder by or on behalf of TDSF shall in any manner limit or restrict any other right or remedy available to TDSF under this Agreement or at law or in equity or in any manner impose upon TDSF any additional obligations or responsibilities not expressly set forth in this Agreement.

9.10.3 TDSF Self-Help Fund.

(a) Funding. Prior to or on the Effective Date, Licensee has either (i) delivered the TDSF Self-Help Fund Amount in cash to an escrow agent reasonably acceptable to TDSF in order to fund an escrow account in accordance with an escrow agreement substantially in the form of Schedule 9.10.3(a), under which escrow agreement Licensee is obligated to continue to provide additional funds as necessary from time to time to maintain on a continuous basis an amount in cash in such account equal to the TDSF Self-Help Fund Amount (as the same may be increased from time to time in accordance with this Section 9.10.3), or (ii) entered into an irrevocable letter of credit in favor of and for the benefit of TDSF with an availability equal to the TDSF Self-Help Fund Amount with a bank or other financial institution and on terms that are reasonably acceptable to TDSF, which irrevocable letter of credit shall be renewed, amended or otherwise modified by Licensee as necessary from time to time to maintain on a continuous basis an availability thereunder equal to the TDSF Self-Help Fund Amount (as the same may be increased from time to time in accordance with this Section 9.10.3) (such escrow account funds or irrevocable letter of credit availability as provided under either of the preceding subparagraphs (i) and (ii), the "**TDSF Self-Help Fund**").

(b) Use of Fund. Licensee acknowledges and agrees that the TDSF Self-Help Fund may be drawn upon only by TDSF (and not by Licensee) from time to time (without TDSF being required to seek or obtain any consent or authorization whatsoever from Licensee) for the purposes of (i) reimbursing TDSF, its Affiliates and Representatives for any and all costs and expenses incurred by any of them from time to time in connection with any TDSF Self-Help Cure described in subparagraph (i), (ii), (iii) or (iv) of Section 9.10.2, (ii) reimbursing TDSF, its Affiliates and Representatives for any and all reasonable costs and expenses incurred by any of them from time to time in connection with any TDSF Self-Help Cure described in subparagraph (v) of Section 9.10.2, (iii) paying TDSF any Licensee Infringement/Breach Fee that is due and owing to TDSF and that has not been paid by Licensee to TDSF by the second (2nd) Business Day following written notice from TDSF to Licensee that such Licensee Infringement/Breach Fee was not paid on the date specified by Section 21.24, and/or (iv) reimbursing TDSF for any amount for which Licensee is required to provide indemnification pursuant to Section 12.1 if such indemnification is not paid by Licensee in accordance with the terms of Section 12 by the fifth (5th) Business Day following written notice from TDSF to Licensee of such non-payment. Costs and expenses incurred by TDSF, its Affiliates and Representatives in connection with any TDSF Self-Help Cure shall be billed against the TDSF Self-Help Fund in accordance with the Allocated Cost Methodology. TDSF's use of the TDSF Self-Help Fund shall not in any manner limit or restrict any other right or remedy available to TDSF under this Agreement or at law or in equity.

(c) TDSF Self-Help Fund Amount and Adjustments. The term "**TDSF Self-Help Fund Amount**" shall mean (i) for the Stub Period, Two Million Dollars ($2,000,000), (ii) for the first (1st) Contract Year, Two Million Dollars ($2,000,000), and (iii) for the second (2nd) Contract Year and continuing through each and every Contract Year of the Term thereafter, an amount equal to the TDSF Self-Help Fund Amount for the immediately preceding Contract Year adjusted to reflect the increase, if any, in the CPI in accordance with the CPI Adjustment Methodology.

9.11 Reporting Obligations.

9.11.1 Monthly Sales and Operating Statements. Not later than twenty (20) Business Days after the end of each Retail Month during the Term, Licensee shall furnish to TDSF a detailed statement setting forth pertinent data relating to the operating performance of the Facilities and the Internet Store during the preceding Retail Month, including, without limitation, information regarding (i) total revenues and Net Retail Sales generated by the Facilities and the Internet Store, reported in the aggregate, by Facility and the Internet Store, by merchandise category and by SKU, (ii) revenue generated from the sale in the Facilities and the Internet Store of Other Disney Store Merchandise, Other Licensee Merchandise and BVHE Merchandise, (iii) revenue generated in the Facilities and the Internet Store from the sale of Disney Merchandise to (a) TDSF or any of its Affiliates and (b) employees of each of Licensee, TDSF and their respective Affiliates, in the aggregate, (iv) the amount of any Taxes on the manufacture, distribution or sale of Disney Merchandise, (v) the amount and type of any and all other sources of revenue, (vi) capital expenditures incurred during such Retail Month, (vii) marketing expenses incurred during such Retail Month, (viii) commissions from the sale of Theme Park Admission Passes and (ix) the amount of purchases made using each of Visa Payment Service Products, Disney's Visa Card, the Monogram-Disney Card and Disney Stored Value Cards.

9.11.2 Quarterly Financial Information. Licensee shall deliver to TDSF, as soon as practicable after the end of each of the first three (3) Fiscal Quarters of Licensee's Fiscal Year, and in any event within twenty (20) Business Days after the end of each such Fiscal Quarter, true and complete copies of the unaudited consolidated balance sheets, and the related consolidated statements of income, stockholders' equity and cash flows, of each of TDS USA and TDS Canada and their respective Subsidiaries as well as of Licensee and its Subsidiaries on a consolidated basis as at the close of such Fiscal Quarter and covering operations for such Fiscal Quarter and, in the case of Fiscal Quarters after the first Contract Year, setting forth in each case in comparative form the figures for the comparable period of the previous Fiscal Year. All such financial statements (i) shall be prepared in accordance with GAAP (except for the omission of normal year-end adjustments and footnote disclosures) consistently applied throughout the periods involved, (ii) shall be true and correct in all material respects, and (iii) shall fairly present the financial condition, income, changes in stockholders' equity and cash flow of TDS USA, TDS Canada and/or Licensee, as the case may be, on a consolidated basis, as applicable, as of the respective dates thereof and for the respective periods covered thereby. All such financial statements delivered hereunder shall be accompanied by a certificate of compliance, executed by the Chief Financial Officer of Licensee or a senior executive financial officer of Licensee with knowledge of or responsibility for the matters being certified, certifying that (a) such financial statements are being delivered pursuant to and in accordance with this Section 9.11, (b) Licensee is in compliance with this Agreement, including, without limitation, with respect to Refurbishments and the material terms of each Lease Agreement, and (c) whether, if this Agreement were up for renewal pursuant to Section 2.2.1 as of the end of the applicable Fiscal Quarter of Licensee (as if the end of such Fiscal Quarter were the end of a Fiscal Year), Licensee would then be in compliance with the Financial Covenant pursuant to Section 2.2.1(e) (with a compliance report setting forth in detail the appropriate calculation for the Financial Covenant).

9.11.3 Annual Financial Information. Licensee shall deliver to TDSF, as soon as practicable after the end of each of Licensee's Fiscal Years, and in any event within forty (40) Business Days after the end of each such Fiscal Year, true and complete copies of the unaudited consolidated balance sheets of each of TDS USA and TDS Canada and their respective Subsidiaries as well as of Licensee and its Subsidiaries on a consolidated basis as at the end of such Fiscal Year, the consolidated statements of income of such parties for such Fiscal Year (together with statements of income for each individual Facility for such Fiscal Year on a Facility-by-Facility basis and a reconciliation of such individual Facility statements of income to the consolidated statements of income of TDS USA, TDS Canada and Licensee), and stockholders' equity and cash flows of such parties for such Fiscal Year and, in the case of Fiscal Years after the First Contract Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail. All such financial statements (i) shall be prepared in accordance with GAAP consistently applied throughout the periods involved, (ii) shall be true and correct in all material respects, and (iii) shall fairly present the financial condition, income, changes in stockholders' equity and cash flow of such parties and their respective Subsidiaries on a consolidated basis, as applicable on the respective dates thereof and for the respective periods covered thereby. All such financial statements delivered hereunder shall be accompanied by a certificate of compliance, executed by the Chief Financial Officer of Licensee or a senior executive financial officer of Licensee with knowledge of or responsibility for the matters being certified, certifying that (i) such financial statements are being delivered pursuant to and in accordance with this Section 9.11, (ii) Licensee is in compliance with this Agreement, including, without limitation, with respect to Refurbishments and the material terms of each Lease Agreement, and (iii) whether, if this Agreement were up for renewal pursuant to Section 2.2.1 as of the end of the applicable Fiscal Year, Licensee would then be in compliance with the Financial Covenant pursuant to Section 2.2.1(e) (with a compliance report setting forth in detail the appropriate calculation for the Financial Covenant).

9.11.4 Liquidity Plan. Licensee shall deliver to TDSF, as soon as practicable after the end of each of Licensee's second (2nd) and fourth (4th) Fiscal Quarters during each Fiscal Year of Licensee, and in any event within twenty (20) Business Days after the end of each such Fiscal Quarter, a list setting forth Licensee's internal and external sources of liquidity, including, without limitation, the source or provider, type, material terms and amount of each such source of liquidity (the "**Liquidity Plan**"), for the two (2) year period beginning on the first (1st) day of such Fiscal Quarter (the "**Liquidity Period**"), in substantially the same format as the liquidity plan that was provided by Licensee's Affiliates pursuant to the Acquisition Agreement, subject to such reasonable changes thereto as TDSF may request from time to time. Licensee shall not accept or use, and shall cause its Affiliates

not to accept or use, as a source of liquidity, any funds contributed, provided or otherwise made available to Licensee or any of its Affiliates by any Disqualified Person, directly or indirectly, in connection with the Liquidity Plan. The Liquidity Plan delivered hereunder shall be accompanied by a certificate of compliance, executed by the Chief Financial Officer of Licensee or a senior executive financial officer of Licensee with knowledge of or responsibility for the matters being certified, certifying that (i) such Liquidity Plan is being delivered pursuant to and in accordance with this Section 9.11, (ii) such Liquidity Plan is true, correct and accurate in all material respects, (iii) no provider of liquidity under such Liquidity Plan is a Disqualified Person, and (iv) he or she reasonably believes the sources of liquidity set forth in such Liquidity Plan will be sufficient in the aggregate to meet Licensee's expected operating needs, capital expenditures and Tax obligations during the applicable Liquidity Period.

9.11.5 Tax Returns. Licensee shall provide TDSF with a copy of the final version of all United States federal income Tax Returns pertaining to the Business and Licensee and its Subsidiaries in the form filed with the Internal Revenue Service within ten (10) Business Days after the actual filing thereof.

9.11.6 SEC Filings. As soon as reasonably practicable prior to the filing thereof with the SEC or any other Governmental Entity, Licensee shall provide TDSF with a draft copy of all filings made by any Licensee Entity and/or any TCP Entity under the Securities Act, the Securities Exchange Act, any other federal or state securities Laws or otherwise with the SEC, including, without limitation, any registration statements (and all amendments or supplements thereto), periodic filings under the Securities Exchange Act, applications for admission and reports to any securities exchange, stock market or other securities trading system, and all correspondence with the SEC or relating to any of the foregoing filings (collectively, "**Securities Filings**"); provided that, (i) for any report or filing (such as a Form 8-K) other than a periodic report on Form 10-Q or 10-K, the annual report to shareholders, the annual proxy statement and any other periodic or regular filings (or any replacement of any of the foregoing), Licensee shall only be required to use commercially reasonable efforts to provide such securities filings prior to the filing thereof with the SEC or any other Governmental Entity, and (ii) with respect to Securities Filings by TCP Entities, Licensee shall only be required to provide a draft copy of the portions of such filings that relate to any Licensee Entity, any Licensee Securities, any Licensee Affiliate Securities and/or the Business. Licensee shall or shall cause its Affiliates to consider in good faith any comments of TDSF with respect to such Securities Filings, provided that no comment made by TDSF with respect to any such Securities Filings shall constitute a representation or warranty by TDSF with respect to the legality thereof and under no circumstances whatsoever shall TDSF have any liability with respect to such Securities Filings. Licensee shall also provide TDSF with a copy of the final version, as filed, of all such Securities Filings within three (3) Business Days after the actual filing thereof. Licensee shall ensure that all Securities Filings are timely filed with the appropriate Governmental Entity, and Licensee represents and warrants to TDSF that no such Securities Filings shall contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein not misleading. In connection with any offering of any Licensee Securities or Licensee Affiliate Securities, Licensee shall, in addition to the Securities Filings identified above, provide TDSF with such additional reports, records and information and access to Licensee's or its Affiliates' officers, directors, underwriters, financial advisors, accountants, counsel and other advisors in connection therewith, in each case as TDSF may reasonably request.

9.11.7 Other Information. In addition to the statements, information and Tax Returns required by this Section 9.11, Licensee shall deliver to TDSF, promptly following TDSF's request, such other documents, reports, data and information as TDSF may from time to time reasonably request.

9.11.8 Form of Delivery. All of Licensee's reports, statements and other information delivered pursuant to this Section 9.11 shall be made in a form and manner and in media (e.g., paper, electronic format) reasonably satisfactory to TDSF (subject to the provisions of Section 9.11.4).

9.12 Organizational Structure.

9.12.1 Maintenance of Corporate Organization. After the Effective Date, during the Term, without the prior written approval of TDSF in its business judgment, which approval shall be sought in each instance in accordance with the approval provisions set forth in Section 9.19.3:

(a) Licensee shall not, and shall not agree to, (i) reorganize itself or any of its Subsidiaries (including Canadian Parent) into a different jurisdiction or a different form of entity or otherwise alter the organizational structure of itself or any of its Subsidiaries (including Canadian Parent), (ii) create or otherwise acquire any direct or indirect Subsidiary or dissolve or otherwise dispose of any of its direct or indirect Subsidiaries (including Canadian Parent), (iii) issue any equity Securities (including, without limitation, any Securities convertible into or exercisable or exchangeable for equity Securities) of any of its direct or indirect Subsidiaries (including Canadian Parent), other than to Licensee Parent, Licensee or Canadian Parent or pursuant to a Permitted Transfer, (iv) except in connection with the incurrence or guarantee of Indebtedness by Licensee or any of its Subsidiaries (including Canadian Parent) in accordance with the terms of this Agreement (including, without limitation, Section 9.17.2, Section 9.17.3 and subparagraphs (c) and (d) of Section 9.13.3, if applicable), Transfer or otherwise change the manner in which it or any of its Subsidiaries (including Canadian Parent) holds any Lease Agreement or any of its material assets (whether voluntarily or by operation of law), or (v) amend, modify, restate or replace any of its or its Subsidiaries' Governing Documents (including the Governing Documents of Canadian Parent); provided, that, notwithstanding subparagraph (i) of this Section 9.12.1(a):

(I) On or within twenty (20) Business Days following the Effective Date, TDS USA shall be permitted to merge with and into a limited liability company to be named "Hoop Retail Stores, LLC" and newly formed for such sole purpose by, and as a wholly owned Subsidiary of, Licensee Parent under the laws of the State of Delaware, which limited liability company shall have no material assets, operations or liabilities prior to such merger and shall be a sister company of TDS USA prior to such merger such that, following such merger, TDS USA shall remain a wholly owned Subsidiary of Licensee Parent as a Delaware

limited liability company (the "**TDS USA Merger**") without the prior written approval of TDSF so long as (w) such TDS USA Merger complies with all applicable Laws, (x) in connection with such TDS USA Merger, Licensee does not amend, modify, restate or replace any of TDS USA's Governing Documents except with such changes as TDSF may approve in its business judgment and except as and to the extent required by applicable Laws, (y) none of the documents or instruments used and/or filed by TDS USA in connection with such TDS USA Merger conflicts with, violates or breaches any provision of this Agreement, and (z) following the TDS USA Merger, the Entity that survives the TDS USA Merger, as the successor to TDS USA, shall be and be deemed to be "TDS USA" and a "Licensee" for all purposes of this Agreement, bound hereby to the same extent and in the same manner as if it were the original TDS USA that executed this Agreement; and

(II) On or within twenty (20) Business Days following the Effective Date, TDS Canada and Canadian Limited Partner may form a limited partnership under the laws of the Province of Ontario ("**New Canadian Limited Partnership**") of which TDS Canada will be and at all times will remain the sole general partner and Canadian Limited Partner will be and at all times will remain the sole limited partner, provided that (A) all documents pertaining to the formation of Canadian Limited Partner and New Canadian Limited Partnership, including, without limitation, each of their respective Governing Documents, shall comply with applicable Laws, shall not conflict with, violate or breach any provision of this Agreement and shall have been approved in writing by TDSF in its business judgment prior to the formation of Canadian Limited Partner and New Canadian Limited Partnership, respectively, (B) on the effective date of the formation of New Canadian Limited Partnership, TDS USA and TDS Canada shall, and shall cause New Canadian Limited Partnership and Canadian Limited Partner to, execute and deliver to TDSF a Joinder Agreement in the form set forth in Schedule 9.12.1(a) (the "**Canadian Joinder**"), and (C) following New Canadian Limited Partnership's, Canadian Limited Partner's, TDS USA's and TDS Canada's execution and delivery to TDSF of the Canadian Joinder, (1) the term "TDS Canada" as used herein shall be deemed to refer individually and collectively to both TDS Canada and New Canadian Limited Partnership, each of which shall be jointly and severally liable for all of the duties and obligations of "TDS Canada" hereunder, (2) the term "Licensee" as used herein shall be deemed to refer individually and collectively to TDS USA, TDS Canada and New Canadian Limited Partnership, each of which shall be jointly and severally liable for all of the duties and obligations of "Licensee" hereunder as set forth in Section 21.26, (3) the term "Canadian Parent" as used herein shall be deemed to refer individually and collectively to both Canadian Parent and Canadian Limited Partner, with the provisions hereof that are applicable to Canadian Parent to be equally applicable in all respects to Canadian Limited Partner, and (4) the Business conducted within Canada may be owned, leased, licensed, controlled and operated by TDS Canada or New Canadian Limited Partnership or both of them, as they shall determine in their respective sole discretion, subject in each case to the terms and conditions of this Agreement applicable to TDS Canada and Licensee; and

(III) On or within twenty (20) Business Days following the Effective Date (except that such date may be extended if and only to the extent that any action taken, or failed to be taken, in error by TDSF or its Affiliates on or prior to the Effective Date renders it impossible to effect such continuation within such twenty (20) Business-Day period, in which event, if applicable, Licensee shall be obligated to correct such error and effect such continuation as soon as reasonably practicable following the Effective Date), TDS Canada shall be permitted to be continued under the laws of the province of New Brunswick, Canada, by way of an amalgamation with Hoop Canada, Inc., a corporation incorporated under the laws of the Province of New Brunswick that will be the survivor of such amalgamation (the "**Canada Reincorporation**" and the date on which the Canada Reincorporation occurs, the "**Canada Reincorporation Date**"), without the prior written approval of TDSF so long as (w) such Canada Reincorporation complies with all applicable Laws, (x) in connection with such Canada Reincorporation, Licensee does not amend, modify, restate or replace any of TDS Canada's Governing Documents except with such changes as TDSF may approve in its business judgment and except as and to the extent required by applicable Laws, (y) none of the documents or instruments used and/or filed by TDS Canada in connection with such Canada Reincorporation conflicts with, violates or breaches any provision of this Agreement, and (z) following the Canada Reincorporation, the Entity that survives the Canada Reincorporation, as the successor to TDS Canada, shall be and be deemed to be "TDS Canada" and a "Licensee" for all purposes of this Agreement, bound hereby to the same extent and in the same manner as if it were the original TDS Canada that executed this Agreement; and

(b) Licensee shall not cause or permit Licensee Parent or TCP to (i) reorganize Licensee Parent or any of its Subsidiaries into a different jurisdiction or a different form of entity or otherwise alter the organizational structure of Licensee Parent or any of its Subsidiaries, (ii) create or otherwise acquire any direct or indirect Subsidiary or dissolve or otherwise dispose of any direct or indirect Subsidiary of Licensee Parent, (iii) issue any equity Securities (including, without limitation, any Securities convertible into or exercisable or exchangeable for equity Securities) of any of Licensee Parent's direct or indirect Subsidiaries, other than to Licensee Parent or pursuant to a Permitted Transfer, (iv) except in connection with the incurrence or guarantee of Indebtedness by Licensee Parent (to the extent TDSF approves any such incurrence or guarantee pursuant to Section 9.17.3) or any of Licensee Parent's Subsidiaries in accordance with the terms of this Agreement (including, without limitation, subparagraphs (c) and (d) of Section 9.13.3, if applicable), Transfer or otherwise change the manner in which Licensee Parent or any Subsidiary of Licensee Parent holds any of its assets (whether voluntarily or by operation of law), or (v) amend, modify, restate or replace any of Licensee Parent's Governing Documents or the Governing Documents of any of Licensee Parent's Subsidiaries; provided, that references in this subparagraph (b) of this Section 9.12.1 to Subsidiaries of Licensee Parent shall not include Licensee or Licensee's Subsidiaries (including Canadian Parent), which shall be governed by subparagraph (a) of this Section 9.12.1; and

(c) In any case where any of the following matters or actions would reasonably be expected to have a material adverse effect on Licensee or the Business, Licensee shall not cause or permit TCP to (i) reorganize TCP or any TCP Entity into a different jurisdiction or a different form of entity or otherwise alter the organizational structure of TCP or any TCP Entity, (ii) create or otherwise acquire, or dissolve or otherwise dispose of, any TCP Entity, (iii) issue any equity Securities (including, without limitation, any Securities convertible into or exercisable or exchangeable for equity Securities) of any TCP Entity, other than pursuant to a Permitted Transfer, (iv) Transfer or otherwise change the manner in which TCP or any TCP Entity holds any of its

material assets relating to or used in connection with the Business (whether voluntarily or by operation of law), or (v) amend, modify, restate or replace any of TCP's Governing Documents or the Governing Documents of any TCP Entity.

9.12.2 Transactions with TCP or its Affiliates. Notwithstanding anything to the contrary set forth in Section 9.12.1, Licensee shall not, and shall not cause or permit any other Licensee Entity to, enter into any transaction involving the sale, merger, consolidation, reorganization or other business combination (including any asset sale) of any Licensee Entity with or into TCP or any of its Affiliates without the prior written approval of TDSF in its sole discretion, unless, following such transaction, (i) all Securities of TDS USA and TDS Canada (or their respective successors) will be solely owned by Licensee Parent and Canadian Parent, respectively (or their respective successors), (ii) Licensee Parent and Canadian Parent (or their respective successors) will have no Subsidiaries (other than TDS USA and TDS Canada, respectively, or their respective successors) nor any other debt or equity investments in any other Person (other than Securities of TDS USA and TDS Canada, respectively (or their respective successors)) and will have no business, assets or operations other than holding all outstanding Securities of TDS USA and TDS Canada, respectively (or their respective successors), (iii) except as permitted by Section 9.1.3, the Business, the Facilities, the Internet Store, the Distribution Centers and any material assets relating to or used in connection therewith will not be owned, leased, licensed, controlled and/or operated by any Person other than TDS USA and TDS Canada (or their respective successors), and (iv) TDS USA, TDS Canada and their respective Subsidiaries (or any of their respective successors) will not directly or indirectly own, lease, license, control, maintain, manage, staff, supply, administer, market, advertise, promote, operate or otherwise engage in any manner in any business or activity other than the Business, in which case such transaction shall be subject to the prior written approval of TDSF in its business judgment. Any approval of TDSF required pursuant to this Section 9.12.2 shall be sought in accordance with the approval provisions set forth in Section 9.19.3. For purposes of clarification, consummation by TDS USA of the TDS USA Merger pursuant to and in accordance with Section 9.12.1(a)(I) shall not be or be deemed to be a breach by TDS USA of this Section 9.12.2.

9.12.3 Distinct Public Name of Licensee Entities. Licensee shall, and shall cause each Licensee Entity to, at all times hold itself out to the public through, and shall be known by, a Distinct Public Name, and each of TDS USA and TDS Canada shall change its name to such a Distinct Public Name within twenty (20) Business Days following the Effective Date. In addition, if Licensee or any License Entity engages in any public offering of any of its Securities or seeks to register any of its Securities under the Securities Act or any other applicable securities Laws, then such Securities shall be traded under a Distinct Public Name approved by TDSF in its sole discretion, such that there shall be no confusion between such Securities offered by Licensee or any Licensee Entity pursuant to such public offering or registration and the publicly traded Securities of TDSF or any of its Affiliates. Licensee acknowledges and agrees that TDSF has approved the use of the name "Hoop" (and variations thereof) in connection with the Licensee Entities only for so long as no Securities of any such Licensee Entity are registered under the Securities Act or other applicable securities Laws or publicly traded in any manner, but in the event any such Securities are to be so registered and/or publicly traded, the name "Hoop" (and variations thereof) will be required to be changed prior to such registration or public offering to a different Distinct Public Name approved by TDSF in its sole discretion. This provision shall survive the expiration or earlier termination of this Agreement indefinitely.

9.13 Governance.

9.13.1 Board Observation Rights at Licensee/TCP Entities. During the Term, with respect to (i) TCP, each Subsidiary of TCP that is engaged in the Business in any manner (other than the Licensee Entities), and any Parent Affiliate of TCP (collectively, the "**TCP Entities**"), and (ii) Licensee Parent, Licensee, Canadian Parent and their respective Subsidiaries (collectively, "**Licensee Entities**"), notwithstanding anything to the contrary contained in the Governing Documents of the TCP Entities or the Licensee Entities, TDSF shall have the right to have its designee (the "**Board Observer**") attend all meetings ("**Board Meetings**") of the board of directors, management committee, managing members or other comparable governing body (each, a "**Board**") of each of the TCP Entities and the Licensee Entities and review in advance each action proposed to be taken by each such Board without a meeting thereof, in accordance with, and subject to, the following:

(a) Licensee shall deliver, and shall cause the other Licensee Entities and the TCP Entities to deliver, to TDSF copies of all reports, notices, minutes, consents, actions taken and/or proposed to be taken without a meeting and other materials that the Licensee Entities and the TCP Entities provide to their respective Board members (collectively, "**Board Communications**"), including, without limitation, at least five (5) Business Days' advance written notice of each Board Meeting;

(b) The Board Observer shall be permitted to attend all Board Meetings in person or by telephone, and Licensee shall ensure that appropriate arrangements are made such that the Board Observer will be able to hear everyone during any Board Meeting at which the Board Observer participates by telephone;

(c) Prior to attending his or her first Board Meeting, each Board Observer shall be required to execute a customary and reasonable confidentiality agreement in form and substance reasonably satisfactory to each of Licensee and TDSF;

(d) The Board Observer shall be an observer only, shall not be an actual member of any Board and shall not have any of the rights, duties or obligations of a member of any Board, including, without limitation, no right to vote on any matter that may come before the Board and no fiduciary or other obligations to any Licensee Entity or TCP Entity, any of their respective securityholders or any other Person arising from being a Board Observer, and Licensee shall indemnify and hold harmless each Board Observer with respect to any Loss that may arise directly or indirectly from, out of or based on his or her service as a Board Observer (other than any Loss arising from the Board Observer's breach of the confidentiality agreement referred to in the preceding subparagraph (c) of this Section 9.13.1);

(e) The TCP Entities (but not the Licensee Entities) shall have the right to exclude the Board Observer from any portion of their respective Board Meetings (and any related portion of any Board Communications) consisting of any compensation committee meeting or any executive session, in each case where all members of the Board who are also employees of the respective TCP Entity are also excluded (collectively, such compensation committee meeting and such executive session, a "**Board Special Committee Session**"), provided, that (i) such Board Special Committee Session is conducted in a manner consistent with past practice and does not relate to the Business and (ii) TDSF is provided advance written notice of such Board Special Committee Session; and

(f) TDSF shall have the right to designate any officer or advisor of TDSF or its Affiliates as the Board Observer and replace or substitute the Board Observer with another officer or advisor of TDSF or its Affiliates from time to time during the Term, subject to Licensee's written consent of each such designee, which consent shall not be unreasonably withheld.

9.13.2 Independent Directors at Licensee Entities. During the Term, notwithstanding anything to the contrary contained in the Governing Documents of any Licensee Entity, the Board of each Licensee Entity (each, a "**Licensee Board**" and collectively, the "**Licensee Boards**") shall at all times include at least two (2) Independent Directors, in accordance with, and subject to, this Section 9.13.2 (provided that, with respect to TDS Canada (or, as applicable, its successor), (x) such two (2) Independent Directors shall not be required to be on the Board of TDS Canada until the date that is twenty (20) Business Days following the Effective Date or, if and only if the Canada Reincorporation is delayed beyond the twentieth (20th) Business Day following the Effective Date as a result of an action taken or failed to be taken in error on or prior to the Effective Date by TDSF or its Affiliates that renders it impossible to effect the Canada Reincorporation within such twenty (20) Business Day period as described in the first parenthetical of Section 9.12.1(a)(III), then until the date that is the Canada Reincorporation Date, and (y) so long as the Independent Directors are not on the Board of TDS Canada, TDS Canada shall not be permitted to engage in any of the transactions contemplated by Section 9.13.3 without the prior written consent of TDSF in its sole discretion). Except as otherwise provided in this Section 9.13.2, each Independent Director shall be jointly selected by Licensee and TDSF and, unless otherwise agreed by each of TDSF and Licensee in its respective sole discretion, shall serve on each of the Licensee Boards. The term of each Independent Director on each Licensee Board shall be two (2) years, following which such Independent Director shall be removed from and replaced with a new Independent Director on each Licensee Board, provided, that any Independent Director may serve on any Licensee Board for one (1) additional two (2) year term with the approval of TDSF in its sole discretion and, thereafter, for additional two (2) year terms with the approval of each of TDSF and Licensee in its respective sole discretion. An Independent Director may be removed from a Licensee Board during such Independent Director's term only with the prior written consent of each of TDSF and Licensee, to be granted or denied in its respective sole discretion. In the event of the death, incapacity, resignation or removal of an Independent Director or the expiration of his or her term as herein provided, a replacement Independent Director shall be selected in accordance with the procedure set forth in the following sentence, and, without the prior written consent of TDSF, no Licensee Board shall take any action requiring the consent of the Independent Directors pursuant to Section 9.13.3 unless and until such replacement Independent Director has been duly appointed. Upon the death, incapacity, resignation or removal of, or at least six (6) months prior to the expiration of the term of, any Independent Director, each of Licensee and TDSF shall submit to the other the names of three (3) proposed candidates to serve as an Independent Director for the next two (2) year term and, for a period of three (3) months after such submissions, Licensee and TDSF shall negotiate in good faith regarding which of the proposed candidates shall serve as Independent Director(s) for such next term; provided, that, if the parties fail to mutually agree upon the Independent Director(s) to serve for such next term from such proposed candidates within such three (3) month period, TDSF shall submit to Licensee the names of four (4) proposed candidates (or, if only one Independent Director remains to be selected, two (2) proposed candidates) to serve as Independent Director(s) for such next term and Licensee shall designate two (2) of such proposed candidates (or, if only one Independent Director remains to be selected, one (1) of such proposed candidates) to so serve for such term, and Licensee shall be entitled to object to any of such four (4) (or, if applicable, two (2)) candidates proposed by TDSF if and only if such candidate fails to satisfy one (1) or more of the elements of the definition of "Independent Director" set forth in Section 1.

9.13.3 Major Decisions Requiring Approval of Independent Directors. In addition to any other approval required under applicable Law or the Governing Documents of any Licensee Entity or otherwise, Licensee shall be responsible for ensuring that no Licensee Entity shall do, cause or permit any of the following to occur without the approval of both of the Independent Directors of such Licensee Entity:

(a) (i) the making by any Licensee Entity of an assignment for the benefit of its creditors; or (ii) the bringing of any action by any Licensee Entity seeking its dissolution, the liquidation of any of its assets or the appointment of a trustee, interim trustee, receiver or other custodian for any of its property; or (iii) the voluntary commencement by any Licensee Entity of a proceeding under the Federal Bankruptcy Code or any other applicable bankruptcy Law, or of a reorganization or arrangement proceeding for the settlement, readjustment, composition or extension of any of its debts upon any terms, or of an action or petition seeking similar relief or alleging that it is Insolvent or unable to pay its debts as they mature; or (iv) the consent by any Licensee Entity to any action brought against the Licensee Entity seeking its dissolution or liquidation of any of its assets, or seeking the appointment of a trustee, interim trustee, receiver or other custodian for any of its property;

(b) the payment by any Licensee Entity of any dividends or other distributions to the holders of its Securities on or with respect to its Securities (each, a "**Dividend Payment**"), other than (without duplication and provided that each written notice provided by Licensee hereunder shall specify under which of the following subparagraphs any Dividend Payment is purported to be authorized): (I) by TDS Canada to Canadian Parent or by Canadian Parent to TDS USA (provided that Licensee shall provide TDSF with at least five (5) Business Days prior written notice thereof); (II) any payment due from any Licensee Entity under the TCP Tax Sharing Agreement or the TCP Intercompany Services Agreement in accordance with its terms (provided that Licensee shall provide TDSF with at least five (5) Business Days prior written notice of any payment under the TCP Tax

Sharing Agreement); (III) following the three (3) month anniversary of the Effective Date, subject to compliance with the conditions set forth in Subparagraphs (i), (ii) and (iv) of this Section 9.13.3(b) as of the date of declaration and payment of the respective Dividend Payments, one (1) or more Dividend Payments that do not exceed, as of the date of declaration and payment thereof, in the aggregate for all Dividend Payments made pursuant to this Subparagraph (III), either (x) Cumulative Cash Flow as of such dates or (z) the NWC Permitted Dividend Amount (and, if any Dividend Payment is made without the approval of both of the Independent Directors of such Licensee Entity pursuant to this Subparagraph (III), Licensee shall, at least five (5) Business Days prior to the date on which such Dividend Payment is to be made, cause its Chief Financial Officer (or a senior executive financial officer of Licensee with knowledge of or responsibility for the matters being certified) to certify in writing to TDSF that the conditions of this Subparagraph (III) have been and will be met on the date of declaration and payment of the Dividend Payment, which certification shall be accompanied by a reasonably detailed calculation of the Cumulative Cash Flow, the NWC Permitted Dividend Amount and all Dividend Payments that have been made and are then proposed to be made pursuant to this Subparagraph (III)); provided that (1) any amount that is treated as a funding commitment payment by TCP and Licensee Parent pursuant to the last sentence of Section 2(b) of the TCP Guaranty and Commitment shall count against (or as a payment of) the NWC Permitted Dividend Amount hereunder for purposes of determining compliance with subparagraph (z) of this Subparagraph (III) and (2) Licensee shall be required to exercise its rights under this Subparagraph (III) prior to exercising its rights under the following Subparagraph (IV); or (IV) a Dividend Payment in connection with which each of the following conditions is met at both the time such Dividend Payment is declared and paid (and, if any Dividend Payment is made without the approval of both of the Independent Directors of such Licensee Entity pursuant to this Subparagraph (IV), Licensee shall, at least five (5) Business Days prior to the date on which such Dividend Payment is to be made, cause its Chief Financial Officer (or a senior executive financial officer of Licensee with knowledge of or responsibility for the matters being certified) to certify in writing to TDSF that the following conditions have been and will be met on the date of declaration and payment of the Dividend Payment, which certification shall be accompanied by a reasonably detailed calculation of the matters set forth in the following Subparagraphs (v), (vi) and (vii)):

(i) There shall be no Uncured Royalty Breach, Uncured Licensee Infringing Use or Uncured Material Breach by Licensee;

(ii) There shall be no continuing, uncured breach by either TCP or Licensee Parent of any material term, covenant or condition that is binding upon TCP or Licensee Parent under the TCP Guaranty and Commitment;

(iii) None of the Licensee Entities shall have any outstanding Indebtedness with a term of one (1) year or more;

(iv) None of the Licensee Entities shall have violated or breached in any material respect, or committed any material event of default or any act or omission that, with notice or the passage of time or both, would result in a material event of default under the terms of any material Contract that is binding upon such Licensee Entity, which violation, breach or event of default has not been cured within the applicable time period permitted under such Contract;

(v) Licensee shall have completed and fulfilled in its entirety the Initial Minimum Refurbishment Commitment in accordance with the terms of Section 9.3.5(b);

(vi) the sum of such Dividend Payment plus all Dividend Payments previously paid shall not exceed an amount equal to fifty percent (50%) of Cumulative Cash Flow prior to the subject Dividend Payment, provided, that, if (A) at both the time the subject Dividend Payment is declared and paid and immediately following the payment thereof (taking into account such payment), there is at least Ninety Million Dollars ($90,000,000) of cash and cash equivalents reflected on the consolidated balance sheet of Licensee Parent, Licensee, Canadian Parent and their respective Subsidiaries, and (B) at both the time the subject Dividend Payment is declared and paid, Licensee, Licensee Parent, Canadian Parent and their respective Subsidiaries have generated at least Ninety Million Dollars ($90,000,000) of Cumulative Cash Flow since the Effective Date, the sum of the Dividend Payment plus all Dividend Payments previously paid may exceed an amount equal to fifty percent (50%) of Cumulative Cash Flow prior to the subject Dividend Payment but shall not exceed an amount equal to ninety percent (90%) of Cumulative Cash Flow prior to the subject Dividend Payment; and

(vii) the Dividend Payment shall not exceed an amount equal to the amount of cash and cash equivalents projected as of the date that is the last day of the Contract Year immediately following the Contract Year in which the subject Dividend Payment is to be made, assuming the payment in full as of such date of all Licensee Payments that will have accrued up to and including such date, all calculated in accordance with GAAP and in good faith by Licensee and based, in the case of future periods, on the Annual Business Plan for such future periods;

(c) except as permitted pursuant to subparagraph (a) or (b) of Section 9.17.2 or subparagraph (d) of this Section 9.13.3, the incurrence by Licensee Entities of any Indebtedness outstanding at any time in excess of Twenty-Five Million Dollars ($25,000,000) in the aggregate among all such entities;

(d) the guarantee by any Licensee Entity of any Indebtedness of any Person, other than a guarantee by a Licensee Entity in connection with the incurrence of Indebtedness as permitted pursuant to subparagraph (a) or (b) of Section 9.17.2;

(e) the making of any capital expenditures or capital expenditure commitments by any Licensee Entity, other than capital expenditures and capital expenditure commitments related to Refurbishments or New Store Construction, in excess of (i) during the Initial Term, Fifteen Million Dollars ($15,000,000) in any Contract Year (which, in the first (1st) Contract Year, will

include the Stub Period), (ii) during the First Renewal Term, if applicable, Twenty Million Dollars ($20,000,000) in any Contract Year, (iii) during the Second Renewal Term, if applicable, Twenty-Five Million Dollars ($25,000,000) in any Contract Year and (iv) during the Third Renewal Term, if applicable, Thirty Million Dollars ($30,000,000) in any Contract Year;

(f) the making of any capital contribution or any other Transfer of cash, cash equivalents, assets, properties, operations or any other portion of the TDS USA business by TDS USA to any of its Subsidiaries in an amount that exceeds, on a cumulative basis from the Effective Date to the applicable date of determination, an amount equal to (i) the portion of the Funding Commitment (as defined in the TCP Guaranty and Commitment) that has been fully and indefeasibly paid and satisfied through the payment of cash or freely transferable Cash Equivalents (as defined in the TCP Guaranty and Commitment) by TCP and/or Licensee Parent to TDS USA in accordance with the terms of the TCP Guaranty and Commitment on a cumulative basis from the Effective Date to the applicable date of determination, multiplied by (ii) a fraction, the numerator of which is the number of Facilities operating in Canada as of the applicable date of determination and the denominator of which is the total number of Facilities operating throughout the Territory as of the applicable date of determination; and

(g) the agreement by any Licensee Entity to take (or cause to be taken) any actions described in the preceding subparagraphs (a) through (f).

9.13.4 Decisions Requiring the Approval of Only the Independent Directors. Upon the occurrence of and at all times during the continuance of any event described in Section 13.11 that would provide TDSF with a right of termination hereunder, the Independent Directors (acting alone and without any other approval or authorizations) shall be entitled to approve and authorize (i) the making by any Licensee Entity of an assignment for the benefit of its creditors, (ii) the bringing of any action by any Licensee Entity seeking its dissolution, the liquidation of any of its assets or the appointment of a trustee, interim trustee, receiver or other custodian for any of its property, (iii) the voluntary commencement by any Licensee Entity of (a) a proceeding under the Federal Bankruptcy Code or any other applicable bankruptcy Law, (b) a reorganization or arrangement proceeding for the settlement, readjustment, composition or extension of any of such Licensee Entity's debts upon any terms, or (c) an action or petition seeking similar relief or alleging that such Licensee Entity is Insolvent or unable to pay its debts as they mature, or (iv) the consent by any Licensee Entity to any action brought against the Licensee Entity seeking its dissolution or liquidation of any of its assets, or seeking the appointment of a trustee, interim trustee, receiver or other custodian for any of its property.

9.13.5 Incorporation into Governing Documents. The Governing Documents for each of the Licensee Entities and the TCP Entities shall contain provisions specifying the terms of Sections 9.13.2, 9.13.3 and 9.13.4, and such Governing Documents shall otherwise be in accordance with the terms of such Sections. For purposes of clarification, such Governing Documents shall provide full membership rights to the Independent Directors (the same as any other member of the Board, other than the additional rights and obligations set forth in Sections 9.13.2, 9.13.3 and 9.13.4) and shall not limit any rights, voting or otherwise, of the Independent Directors.

9.14 Auditors. Licensee's auditors shall be a nationally recognized "Big 4" accounting firm (or, in the event that all of the "Big 4" accounting firms in existence as of the Effective Date cease to exist during the Term, an accounting firm of comparable national standing satisfactory to TDSF in its business judgment). Licensee shall promptly notify TDSF in writing of any change in Licensee's auditors.

9.15 Affiliate Transactions.

9.15.1 Intercompany Agreements. Without the prior written approval of TDSF in its sole discretion, none of Licensee Parent, Licensee, Canadian Parent or any of their respective Subsidiaries shall make any payment or reimbursement to, or borrow any monies or receive any services from, or permit any Encumbrance to be placed upon the Business, any Licensee Securities, any Licensee Affiliate Securities or any of the Contracts (including, without limitation, this Agreement), assets or properties of Licensee or any Licensee Entity in connection with, TCP or any of its Affiliates (other than the Licensee Entities, subject to Section 9.17.2(e)), except pursuant to and in accordance with the provisions of the TCP Intercompany Services Agreement or the TCP Tax Sharing Agreement. For purposes of clarification and without limiting the foregoing, under no circumstances shall TCP or its Affiliates be entitled to pledge as collateral or grant any security interest in or otherwise Encumber any Licensee Securities, any Licensee Affiliate Securities, any Contracts (including without limitation, this Agreement), assets or properties of Licensee or any Licensee Entity or any portion of the Business in connection with any Indebtedness of TCP or its Affiliates (other than the Licensee Entities to the extent permitted under Section 9.17.2(e)). Any amendments, modifications, waivers, renewals, replacements or other changes to or under the TCP Intercompany Services Agreement or the TCP Tax Sharing Agreement shall be subject to the approval of TDSF in its business judgment.

9.15.2 Other Transactions with Affiliates. Other than the TCP Intercompany Services Agreement and the TCP Tax Sharing Agreement, all transactions between Licensee and/or its Subsidiaries, on the one hand, and any of their respective Affiliates, on the other hand (including, without limitation, any purchase, sale, lease or exchange of property), shall be conducted at all times on an arm's length, commercially reasonable basis and on terms and conditions at least as favorable to Licensee and its Subsidiaries as those that would be commercially available from an unaffiliated third party. Except as otherwise provided in Section 9.12.2, any transaction between Licensee and/or its Subsidiaries, on the one hand, and one (1) or more of their respective Affiliates, on the other hand (other than a transaction pursuant to and in accordance with the TCP Intercompany Services Agreement or the TCP Tax Sharing Agreement), involving more than Sixty Thousand Dollars ($60,000) in the aggregate (or such greater amount as may be set forth as the disclosure threshold under Item 404(a) of Regulation S-K promulgated by the Securities and Exchange Commission, as amended, modified or replaced from time to time) in any Contract Year shall be subject to TDSF's prior written approval in its sole discretion, which approval shall be sought in accordance with the approval provisions set forth in Section 9.19.3.

9.16 Permits and Compliance With Law. Licensee shall be responsible for making any filings with, and applying for, obtaining and maintaining all permits, authorizations, variances, waivers, licenses and other approvals required from, Governmental Entities for the construction, maintenance and operation of the Business Properties and all other matters pertaining to the operation of the Business; provided, that, upon Licensee's request and at Licensee's expense, TDSF shall cooperate with Licensee to make such filings and to obtain and maintain such permits, authorizations, variances, waivers, licenses and approvals. Without limiting any other specific obligations of Licensee hereunder (including the preceding sentence), Licensee shall ensure, and shall be solely responsible for ensuring, that all of the operations of the Business Properties and the Business as described in this Agreement or otherwise shall at all times be conducted in accordance with all applicable Laws.

9.17 Funding of Business.

9.17.1 Operating Costs. Except to the extent of any reimbursement obligation of TDSF expressly provided in this Agreement, Licensee shall bear all costs incurred in connection with the operation of the Business Properties and the Business and the performance of its obligations under this Agreement, including, without limitation, all costs with respect to the identification and leasing or acquisition of each Business Property; the development, construction, installation and furnishing of the Business Properties; the creation, development, hosting and operation of the Internet Store and all distribution and back office functions relating thereto; the manufacture, sourcing, delivery, distribution, offer for sale, sale, and marketing, advertising and promotion of Disney Merchandise; operations and personnel training; and preparing any statements, reports or other documents required by this Agreement.

9.17.2 Indebtedness of Licensee and its Subsidiaries. Without the prior written approval of TDSF in its sole discretion, Licensee shall not, and shall not permit any of its Subsidiaries to, issue any debt Securities, incur any Indebtedness or guarantee or otherwise be or agree to be liable for any Indebtedness or liabilities of any Person, except as permitted by and in accordance with the following:

(a) Licensee and/or its Subsidiaries shall be permitted to incur trade payables and comparable liabilities having terms of one (1) year or less and incurred in the ordinary course of business;

(b) From the Effective Date until the fifth (5th) anniversary of the Effective Date (the "**Five Year Date**"), Licensee and/or its Subsidiaries shall be permitted to enter into and incur Indebtedness under one (1) or more loan agreements, credit agreements, lines of credit, working capital or other bank facilities or similar arrangements under which a bank or other financial institution provides or arranges loans, letters of credit and/or the extension of credit to Licensee and/or its Subsidiaries in connection with the operation of the Business (collectively, the "**Debt Facilities**"); provided, that (i) the amount of funds available under the Debt Facilities is determined based solely on Licensee's and its Subsidiaries' inventory (including, to the extent permitted under the applicable Debt Facility, inventory on order) and accounts receivable and is not increased based on a guarantee by TCP or its Affiliates or any other Person (other than Licensee's Subsidiaries) or any other credit-enhancing factor or device (provided, that any such guarantee by TCP or its Affiliates or other credit-enhancing factor or device shall not be prohibited so long as (x) such guarantee or other credit-enhancing factor or device is necessary to obtain any such Debt Facility or to obtain a more favorable interest rate and (y) the amount of funds available under any such Debt Facility is not increased, in whole or in part, based on such guarantee or other credit-enhancing factor or device); (ii) Indebtedness incurred under all such Debt Facilities, taken together, shall be limited to (A) trade letters of credit to fund inventory purchases without limitation, (B) one (1) or more revolving loans having terms of one (1) year or less to fund (x) working capital needs or letters of credit to fund working capital needs other than inventory purchases, in each case including, without limitation, capital expenditures in connection with Refurbishments and New Store Construction, or (y) the portion of the net working capital adjustment that may, at the election of Licensee Parent, be paid by Licensee pursuant to Section 3.3.1(B) of the Acquisition Agreement (such loans and letters of credit, collectively, the "**Revolving Loans**") and/or (C) one (1) or more term loans having terms of more than one (1) year solely to fund capital expenditures for purposes other than Refurbishments and New Store Construction (collectively, the "**Term Loans**") (by way of example and without limitation, capital expenditures in connection with a new information technology system or a new Distribution Center shall be permitted uses of funds borrowed pursuant any Term Loan); and (iii) (x) the aggregate outstanding liability of Licensee and its Subsidiaries under all Term Loans shall not exceed Seven Million Five Hundred Thousand Dollars ($7,500,000) in the aggregate at any time, (y) the aggregate outstanding liability of Licensee and its Subsidiaries under all Revolving Loans and all Term Loans, taken together, shall not exceed (aa) Forty Million Dollars ($40,000,000) in the aggregate during the period from the Effective Date to February 1, 2005, by which time such outstanding aggregate liability must be paid down to Twenty-Five Million Dollars ($25,000,000) or less in the aggregate, and (bb) following February 1, 2005 and the pay-down referred to in the preceding subparagraph (aa), Thirty-Five Million Dollars ($35,000,000) in the aggregate at any time and (z) at least once per calendar year (other than calendar year 2004), the aggregate outstanding liability of Licensee and its Subsidiaries under all Revolving Loans and all Term Loans, taken together, shall be reduced to an amount equal to Ten Million Dollars ($10,000,000) or less (for purposes of this subparagraph (iii), "aggregate outstanding liability" shall include all liability for principal, interest, penalties, fees, charges and other payments in any form and the amount of letters of credit to fund working capital needs other than inventory purchases described in subparagraph (ii)(B) of this Section 9.17.2(b) shall be deemed to constitute outstanding principal);

(c) From the Five Year Date until the date as of which TCP and Licensee Parent have invested at least One Hundred Million Dollars ($100,000,000) in cash or cash equivalents in Licensee pursuant to the TCP Guaranty and Commitment, Licensee and/or its Subsidiaries shall be permitted to enter into and incur Indebtedness under one (1) or more Debt Facilities; provided, that (i) the amount of funds available under the Debt Facilities is determined based solely on Licensee's and its Subsidiaries' inventory and accounts receivable and is not increased based on a guarantee by TCP or its Affiliates or any other Person (other than Licensee's Subsidiaries) or any other credit-enhancing factor or device (provided, that any such guarantee by TCP or its Affiliates or other credit-enhancing factor or device shall not be prohibited so long as (x) such guarantee or other credit-

enhancing factor or device is necessary to obtain any such Debt Facility or to obtain a more favorable interest rate and (y) the amount of funds available under any such Debt Facility is not increased, in whole or in part, based on such guarantee or other credit-enhancing factor or device); and (ii) such Debt Facilities and all Indebtedness incurred thereunder shall be subject to the approval of both of the Independent Directors of Licensee or such Subsidiary, as applicable, to the extent required by subparagraphs (c) and/or (d) of Section 9.13.3;

(d) Following the later of (i) the Five Year Date and (ii) the date as of which TCP and Licensee Parent have invested at least One Hundred Million Dollars ($100,000,000) in cash or cash equivalents in Licensee pursuant to the TCP Guaranty and Commitment, Licensee and/or its Subsidiaries shall be permitted to enter into and incur Indebtedness under one (1) or more Debt Facilities; provided, that such Debt Facilities and all Indebtedness incurred thereunder shall be subject to the approval of both of the Independent Directors of Licensee or such Subsidiary, as applicable, to the extent required by subparagraphs (c) and/or (d) of Section 9.13.3; and

(e) Without limiting the provisions of subparagraphs (a) through (d) of this Section 9.17.2, Licensee acknowledges and agrees that, with respect to any Debt Facility proposed to be entered into by Licensee or its Subsidiaries, Licensee shall, at least fifteen (15) Business Days prior to entering into or permitting any Subsidiary to enter into any such Debt Facility, provide TDSF with drafts of all Contracts to be entered into by Licensee or its Subsidiaries in connection therewith and shall, thereafter, provide TDSF with each draft of any such Contract that is distributed between the parties thereto (redlined to reflect changes therein). TDSF shall have the right to review and comment on all drafts of such Contracts, which comments shall be considered by Licensee and its Subsidiaries in good faith, and the final versions of all terms and provisions of such Contracts that relate to or affect in any manner the remedies thereunder, the termination thereof or defaults and/or events of default thereunder, or that, as determined by TDSF in its business judgment, relate to or affect in any manner this Agreement, the rights or obligations of the parties hereunder or the names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or its Affiliates, shall be subject to the prior written approval of TDSF in its business judgment. Without limiting the foregoing, unless TDSF shall otherwise consent in its sole discretion, Licensee acknowledges and agrees that, in connection with any new Debt Facility entered into by Licensee in accordance with this Section 9.17 following the Effective Date, (i) such Debt Facility shall provide that, upon the occurrence of any default or event of default that would allow a lender or any other Person under such Debt Facility to foreclose on or sell the inventory or other collateral securing the obligations under such Debt Facility, TDSF and its Affiliates shall have protections, cure periods, grace periods and other rights and remedies at least equal to those available to TDSF and its Affiliates under the Original Debt Facility, (ii) except and only to the limited extent granted under the Original Debt Facility, under no circumstances whatsoever shall this Agreement, or any rights of Licensee arising hereunder in the Disney Properties, the Licensed Materials or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or its Affiliates, be pledged as collateral for, be the subject of any security interest or lien granted in connection with, or otherwise be Encumbered in any manner whatsoever by, any such Debt Facility, and (iii) except and only to the limited extent entered into in connection with the Original Debt Facility, neither TDSF nor its Affiliates shall be required to enter into any Contract (including, without limitation, any inter-creditor agreement) associated with any such Debt Facility (provided that, with respect to any new Debt Facility of Licensee and its Subsidiaries that complies with the provisions of this Agreement, including this Section 9.17.2, upon Licensee's request, TDSF shall enter into an agreement with the agent or lender under such new Debt Facility containing the same provisions as those set forth in the "Designation of Secured Lender Under License Agreement" entered into by TDSF in connection with the Original Debt Facility). The foregoing provisions of this Section 9.17.2(e) shall apply equally to any proposed amendment, modification or other change to any Debt Facility of Licensee or its Subsidiaries, including, without limitation, the Original Debt Facility.

9.17.3 Indebtedness of Licensee Parent and Canadian Parent. Without the prior written approval of TDSF in its sole discretion, neither Licensee Parent nor Canadian Parent shall under any circumstances issue any debt Securities, incur any Indebtedness, guarantee or otherwise be or agree to be liable for any Indebtedness of any Person or otherwise incur or suffer to exist any material liabilities of any kind, other than Licensee Parent’s obligations under the TCP Guaranty and Commitment.

9.18 Operating Manual. Prior to the Effective Date, TDSF and Licensee have agreed upon the terms of one (1) or more operating manuals setting forth, among other things, operating procedures, employee training requirements, quality control procedures and other policies and procedures applicable to the conduct of the Business and the Business Properties (collectively, the "**Operating Manual**"). Licensee shall, and shall cause its Affiliates to, comply with and abide by the Operating Manual. Each of TDSF and Licensee may, from time to time, propose changes in, additions to or deletions, variations or departures from the Operating Manual by providing written notice of such proposal to the other party. The parties shall consider any such proposal in good faith and any such proposed change, addition, deletion, variation or departure shall be subject to the approval of TDSF and Licensee in their respective business judgment; provided, that (i) any proposed change, addition, deletion, variation or departure relating to the Disney Properties, the Licensed Materials or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or any of its Affiliates shall, if proposed by Licensee, be subject to the approval of TDSF in its sole discretion or, if proposed by TDSF, not require the approval of Licensee, (ii) neither party shall disapprove any proposed change, addition, deletion, variation or departure that is necessary in order to comply with applicable Law or any change thereof, including, without limitation, health and safety standards and regulations, and (iii) any proposed change, addition, deletion, variation or departure that is intended to amend, modify, supplement or replace any of the terms or provisions of this Agreement or has the effect of amending, modifying, supplementing or replacing any of such terms or provisions shall be subject to the approval of TDSF and Licensee in their respective sole discretion. Licensee shall reimburse TDSF for all costs and expenses incurred by TDSF or its Affiliates in connection with the design, development, printing and distribution of the Operating Manual and any amendments thereto. Notwithstanding the preceding sentence, TDSF shall be, and be deemed to be, the sole and exclusive owner of the Operating Manual and all rights therein, which are reserved to TDSF. Licensee shall neither acquire nor assert any rights in or to the Operating Manual and, without limiting the foregoing, Licensee hereby assigns to TDSF all rights

created by its use of the Operating Manual, together with the goodwill attaching to that part of Licensee's business in connection with which the Operating Manual is used. TDSF's ownership of the Operating Manual shall include sole and exclusive ownership of all amendments, modifications, replacements or other derivatives thereof or therefrom, regardless of which party is responsible for any of the foregoing.

9.19 Operational Approval Procedures.

9.19.1 Approving Openings and Closings of Business Properties. Licensee shall not be permitted to open or close any Facility without obtaining (i) in the case of Permitted Openings, TDSF's written approval of the New Store Construction pursuant to Section 9.19.2 and (ii) in any case other than Permitted Openings and Permitted Closings, TDSF's written approval of the Opening/Closing Proposal pursuant to the following provisions of this Section 9.19.1 in each instance:

(a) Submissions. Licensee shall submit to TDSF for approval (i) a written proposal with respect to the opening or closing of the Business Property (the "**Opening/Closing Proposal**"), (ii) specific information with respect to the location of the Business Property proposed to be opened or closed, (iii) in the case of the closing of a Business Property, a statement of the proposed Barricade Procedures and Wind Down Procedures for such Business Property and, if the applicable Lease Agreement is not expiring, the manner in which the Lease Agreement will be terminated and the status of the consent or non-consent of the Landlord pertaining thereto and any terms and conditions related to obtaining such consent, and (iv) all other background information and supporting material as will be reasonably necessary, or as TDSF may reasonably request, to allow TDSF to make an informed judgment and appraisal for purposes of TDSF's approving or disapproving Licensee's Opening/Closing Proposal. All such materials shall be submitted to the individual so designated by TDSF.

(b) Approval or Disapproval. Provided that Licensee has fully complied with Section 9.19.1(a), within twenty (20) Business Days following Licensee's submission thereof, TDSF shall notify Licensee of its approval or disapproval of the Opening/Closing Proposal. Licensee acknowledges and agrees that TDSF shall not approve any proposed closing of a Business Property pursuant to this Section 9.19.1 unless (i) the related Lease Agreement is expiring concurrently with such closing or authorizes cessation of operations at such Business Property prior to expiration thereof or (ii) the respective Landlord under the related Lease Agreement has consented to the early termination thereof and the terms and conditions upon which the Landlord has granted such consent are satisfactory to TDSF in its business judgment.

(c) Modification of Opening/Closing Proposal; Postponement or Revocation of Approval. In the event that an Opening/Closing Proposal approved by TDSF pursuant to Section 9.19.1(b) or any of the materials submitted to TDSF pursuant to Section 9.19.1(a) in connection with the approval thereof are (or, in light of changed circumstances, need to be) modified or updated prior to, in the case of a proposed New Business Property opening, the execution of the New Business Property Lease Agreement for such New Business Property by Licensee or any of its Affiliates and, in the case of a proposed Business Property closing, such closing, Licensee shall submit a modified Opening/Closing Proposal, together with any modified or new supporting materials of the type described in Section 9.19.1(a). Provided that Licensee has fully complied with this Section 9.19.1(c), TDSF shall notify Licensee of its approval or disapproval of the modified Opening/Closing Proposal within ten (10) Business Days following Licensee's submission of the materials required or requested to be submitted pursuant to this Section 9.19.1(c). In the event that (i) any such modifications, (ii) any alleged or actual copyright and/or trademark infringement or other Disney IP Claim or any other legal consideration or rights dispute regarding any intellectual property, or (iii) any corporate brand considerations, including, without limitation, protection of the Disney Properties or the "Disney" brand, name, reputation and quality, requires, in TDSF's sole discretion, the temporary postponement (or, if necessary, revocation) of any previous approval, then TDSF shall be entitled to postpone or revoke such approval by promptly notifying Licensee thereof; provided, that, in the case of a revocation pursuant to the preceding subparagraph (ii) or (iii), TDSF will reimburse Licensee for its actual, reasonable out-of-pocket costs and expenses incurred from the date the preliminary approval of the revoked item was granted up to the date of the revocation of such approval.

9.19.2 Approving Facility Design Elements, New Store Construction and Refurbishments. Licensee shall be required to obtain TDSF's written approval with respect to all Facility Design Elements, whether in connection with (i) constructing, building out, outfitting and opening a Facility ("**New Store Construction**"), (ii) making Refurbishments to a Facility, or (iii) otherwise modifying any aspect of the design or appearance of a Facility **("Design Modifications**"), in accordance with the following procedures:

(a) Submissions. Licensee shall submit to TDSF for approval (i) a written proposal with respect to the proposed New Store Construction, Refurbishment or Design Modifications, as the case may be (the "**Design Proposal**"), which proposal shall include, to the extent applicable, all plans, drawings, designs, artwork, photographs, materials, samples and other media relating to all proposed Facility Design Elements, including, without limitation, the size; square footage (except that no approval shall be required for a Store Facility that has at least 2,250 but not more than 7,500 square feet of net retail merchandising space that is open to the general public); layout; departments and organization; carpeting and flooring; furniture, fixtures and equipment; shelving; appliances; lighting; color scheme; decor; signage; displays; cut-outs; window strips; multimedia; check-out counters, registers and systems; and all other physical attributes (it being understood that each of the foregoing attributes shall be subject to TDSF's approval in its business judgment to the extent such attributes do not use, bear, display or feature any Disney Properties); (ii) a budget setting forth the estimated costs of such New Store Construction, Refurbishments or Design Modifications, as the case may be; and (iii) all other background information and supporting material as will be reasonably necessary, or as TDSF may reasonably request, to allow TDSF to make an informed judgment and appraisal for purposes of TDSF's approving or disapproving the Design Proposal. All such materials shall be submitted to the individual so designated by TDSF.

(b) Approval. Provided that Licensee has fully complied with Section 9.19.2(a), TDSF shall notify Licensee of its approval or disapproval of the Design Proposal within twenty (20) Business Days following Licensee's submission of the information required or requested to be submitted pursuant to Section 9.19.2(a).

(c) Modification of Design Proposal; Postponement or Revocation of Approval. In the event that a Design Proposal approved by TDSF pursuant to Section 9.19.2(b) or any of the materials submitted to TDSF pursuant to Section 9.19.2(a) in connection with the approval thereof, are (or, in light of changed circumstances, need to be) modified or updated prior to the completion of the New Store Construction, Refurbishments or Design Modifications, as the case may be, Licensee shall submit a modified Design Proposal, together with any modified or new supporting materials of the type described in Section 9.19.2(a). Provided that Licensee has fully complied with this Section 9.19.2(c), TDSF shall notify Licensee of its approval or disapproval of the modified Design Proposal within ten (10) Business Days following Licensee's submission of the materials required or requested to be submitted pursuant to this Section 9.19.2(c). In the event that (i) any such modifications, (ii) any alleged or actual copyright and/or trademark infringement or other Disney IP Claim or any other legal consideration or rights dispute regarding any intellectual property, or (iii) any corporate brand considerations, including without limitation, protection of the Disney Properties or the "Disney" brand, name, reputation and quality requires, in TDSF's sole discretion, the temporary postponement (or, if necessary, revocation) of any previous approval, then TDSF shall be entitled to postpone or revoke such approval by promptly notifying Licensee thereof; provided, that, in the case of a revocation pursuant to the preceding subparagraphs (ii) or (iii), TDSF will reimburse Licensee for its actual, reasonable out-of-pocket costs and expenses incurred from the date the preliminary approval of the revoked item was granted up to the date of the revocation of such approval.

(d) Expedited Facility Design Element Approval Process. At any time and from time to time during the Term, Licensee shall be entitled to submit to TDSF for approval plans, drawings, designs, artwork, photographs, materials, samples and other media that set forth or propose a combination of particular Facility Design Elements (by way of illustration and not limitation, certain flooring, furniture, fixtures and equipment, a specified color scheme and other selected Facility Design Elements) to serve as a Facility design template to be used in multiple Facilities (a "**Model Design**"). Any such Model Design so submitted by Licensee shall be subject to TDSF's approval in its sole discretion (except to the extent that certain Facility Design Elements are subject to TDSF's approval in its business judgment as set forth in Section 9.3.6(a) or Section 9.19.2(a)). TDSF shall notify Licensee of its approval or disapproval of the proposed Model Design within forty-five (45) Business Days following Licensee's submission. In addition, prior to the Effective Date, TDSF has provided Licensee with one (1) or more Model Designs developed by and satisfactory to TDSF, including the "Castle" Model Design (each, an "**Initial Model Design**"), and TDSF may (but shall not be obligated to) provide Licensee with one (1) or more additional Model Designs developed by and satisfactory to TDSF at such times during the Term as TDSF may elect in its sole discretion. Licensee shall be entitled to use any Model Design approved or provided by TDSF hereunder in connection with future New Store Construction, Refurbishments or Design Modifications during the time period specified by TDSF (which time period shall not be less than three (3) calendar years) without re-submitting such Model Design for approval in accordance herewith; provided, that (i) Licensee shall have the right to make reasonable modifications to the layout of any approved Model Design solely for the purpose of conforming the Model Design to the size and layout of the particular Leased Property, provided, that, any modification to any Disney Properties used therein shall be subject to TDSF's approval in its sole discretion, (ii) Licensee shall remain obligated to submit and, to the extent required by this Section 9.19.2, obtain TDSF's approval with respect to, the other materials required under this Section 9.19.2 to be submitted with Design Proposals in connection with such New Store Construction, Refurbishments or Design Modifications (e.g., for purposes of illustration and without limitation, budget and cost information), provided, that, in the event that TDSF's approval is required with respect to such other materials, TDSF shall notify Licensee of its approval or disapproval thereof within ten (10) Business Days following Licensee's submission of such materials, (iii) upon TDSF's request, Licensee shall provide reasonably satisfactory evidence of its compliance with the applicable Model Design (including, without limitation, the specifications and quality standards thereof) and (iv) TDSF shall have the right in its sole discretion to alter, modify, discontinue or terminate any Model Design at any time (x) following the time period designated for use thereof by TDSF or (y) prior to the expiration of such designated time period in the event that (I) any alleged or actual copyright and/or trademark infringement or other Disney IP Claim or any other legal consideration or rights dispute regarding any intellectual property, or (II) any corporate brand considerations, including, without limitation, protection of the Disney Properties or the "Disney" brand, name, reputation and quality, requires, in TDSF's sole discretion, such alteration, modification, discontinuation or termination of such Model Design.

(e) Refurbishment Costs. Notwithstanding anything to the contrary herein, to the extent Licensee proposes to make Refurbishments to one (1) or more Facilities pursuant to a Model Design submitted by Licensee to TDSF for approval pursuant to Section 9.19.2(d), in evaluating such Model Design so submitted by Licensee, TDSF shall not require Licensee to complete such Refurbishments pursuant to a Model Design that would require Licensee to spend in connection therewith an amount in excess of the reasonable cost for completing Refurbishments in accordance with any Initial Model Design (the "**Maximum Refurbishment Amount**"), provided, that, beginning effective with the second (2nd) Contract Year and continuing through each and every Contract Year of the Term thereafter, the Maximum Refurbishment Amount for each Contract Year shall be the Maximum Refurbishment Amount for the immediately preceding Contract Year, as adjusted to reflect the increase, if any, in the CPI in accordance with the CPI Adjustment Methodology.

9.19.3 Other Operational Approvals. Except as otherwise specifically provided in this Section 9.19 and except for any approval required with respect to Licensed Materials or Disney Properties (for which the provisions of Sections 4 and 5 shall govern), Licensee shall comply with the following procedures in obtaining TDSF’s approval with respect to any matter as to which such approval is required pursuant to this Section 9 (each such matter as to which TDSF’s approval is required, an "**Approval Item**"):

(a) Submissions. With respect to any Approval Item, Licensee shall submit to TDSF for approval a written proposal with respect to the Approval Item (an "**Approval Item Proposal**"), including all background information and supporting material as will be reasonably necessary, or as TDSF may reasonably request, to allow TDSF to make an informed judgment and appraisal for purposes of TDSF's approving or disapproving the Approval Item Proposal. Without limiting the foregoing, in the case of approval of any Approval Item Proposal that is a Contract, Licensee shall submit an initial draft of the proposed Contract and shall, thereafter, provide TDSF with each revised draft thereof that is distributed between the parties thereto (redlined to reflect changes therein). TDSF shall have the right to review and comment on all drafts of each such Contract, which comments must be considered in good faith by Licensee, and the final version of each such Contract shall be subject to approval by TDSF in its business judgment (unless, with respect to any such particular Approval Item that is a Contract, a different approval standard is otherwise provided in this Agreement, in which case such other approval standard shall apply). All such materials (including any Contracts) shall be submitted to the individual so designated by TDSF.

(b) Approval. Provided that Licensee has fully complied with Section 9.19.3(a), TDSF shall notify Licensee of its approval or disapproval of the Approval Item Proposal within twenty (20) Business Days following Licensee's submission of the materials required or requested to be submitted pursuant to Section 9.19.3(a); provided, however, that with respect to any Contract, TDSF shall notify Licensee of its approval or disapproval of such Contract within ten (10) Business Days after the final version of such Contract is provided to TDSF.

(c) Modification of Approval Item Proposal; Postponement or Revocation of Approval. In the event that an Approval Item Proposal approved by TDSF pursuant to Section 9.19.3(b) or any of the materials submitted to TDSF pursuant to Section 9.19.3(a) in connection with the approval thereof are (or, in light of changed circumstances, need to be) modified or updated prior to the taking of any action with respect to such Approval Item Proposal, Licensee shall submit a modified Approval Item Proposal, together with any modified or new supporting materials of the type described in Section 9.19.3(a). Without limiting the foregoing, in the event that a modified Approval Item Proposal is a Contract, Licensee shall submit an initial draft of such modified Contract, redlined to reflect changes to the form of such Contract that was approved pursuant to Section 9.19.3(b), and shall, thereafter, provide TDSF with each revised draft thereof that is distributed between the parties thereto (redlined to reflect changes therein). Such Contract shall be subject to the provisions applicable to Contracts set forth in Section 9.19.3(a) (including the approval standards set forth therein). Provided that Licensee has fully complied with this Section 9.19.3(c), TDSF shall notify Licensee of its approval or disapproval of the modified Approval Item Proposal within ten (10) Business Days following Licensee's submission of the materials required or requested to be submitted pursuant to this Section 9.19.3(c). In the event that (i) any such modifications, (ii) any alleged or actual copyright and/or trademark infringement or other Disney IP Claim or any other legal consideration or rights dispute regarding any intellectual property, or (iii) any corporate brand considerations, including, without limitation, protection of the Disney Properties or the "Disney" brand, name, reputation and quality, requires, in TDSF's sole discretion, the temporary postponement (or, if necessary, revocation) of any previous approval, then TDSF shall be entitled to postpone or revoke such approval by promptly notifying Licensee thereof, provided, that in the case of a revocation pursuant to the preceding subparagraphs (ii) or (iii), TDSF will reimburse Licensee for its actual, reasonable out-of-pocket costs and expenses incurred by Licensee from the date the preliminary approval of the revoked item was granted up to the date of the revocation of such approval.

9.19.4 Mandatory Provisions in New Business Property Lease Agreements and Lease Extension Arrangements. Each New Business Property Lease Agreement and, to the extent not already contained in any applicable Lease Agreement, each Lease Extension Arrangement shall contain provisions satisfactory to TDSF in its sole discretion that give effect to the following (**):

---

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

(a) Acknowledgment of No Obligation by TDSF. Notwithstanding any rights of TDSF under the applicable Lease Agreement and the relationship between TDSF and Licensee hereunder, Landlord shall acknowledge that (other than with respect to any express guarantee obligations of TDSF or any of its Affiliates under a Disney-Guaranteed Lease) TDSF and its Affiliates have no obligations under such Lease Agreement, provided, that this Section 9.19.4(a) shall not apply in the case of any Lease Extension Arrangement that extends the term of a Lease Agreement for a period of less than one (1) year;

(b) TDSF's Right to Enter and Occupy Facility. TDSF (or its Representatives or Affiliates) shall, without the consent of Licensee or the applicable Landlord but subject to such customary and reasonable requirements of such Landlord as may be set forth in such Lease Agreement, have the right to enter and occupy the Business Property that is the subject of the applicable Lease Agreement for the purpose of effectuating repairs or alterations to such Business Property so long as such repairs or alterations are allowed to be made by Licensee under such Lease Agreement;

(c) TDSF's Right to Cure Default. Following any event or circumstance that constitutes (or that with the passage of time or the giving of notice or both would become) an event of default under a Lease Agreement, TDSF (or its designated Representatives or Affiliates) shall have the right, but not the obligation, to cure such default; and

(d) TDSF's Right to Transfer Upon License Termination. If this Agreement expires or is earlier terminated, Landlord's consent to a Transfer of the applicable Lease Agreement (or to a change of control of the tenant thereunder) (i) in the case of a Transfer to TDSF or any of its Affiliates, shall not be required, and (ii) in the case of a Transfer to any other Person, shall not be unreasonably withheld, regardless of whether the request for such consent is made by Licensee or by TDSF or any of its Affiliates.

9.19.5 General Terms Applicable to TDSF Approval of All Operational Submissions. Notwithstanding anything contained herein to the contrary, with respect to all submissions by Licensee under this Section 9.19, Licensee acknowledges and agrees that: (i) the approval or disapproval of any such submission shall be at TDSF's sole discretion (unless the specific covenant under which Licensee requests approval specifies TDSF's business judgment rather than TDSF's sole discretion); (ii) if any submission is disapproved by TDSF, where such submission by Licensee would be permissible in accordance with the terms of this Agreement if modified, TDSF shall, to the extent feasible (and in any event with respect to a substantial number of submissions), propose in writing alternative suggestions and recommendations with respect thereto for the purpose of providing Licensee an opportunity to correct such submission and re-submit it to TDSF; (iii) any submission not receiving the specific written approval of TDSF shall be deemed disapproved; (iv) no failure of TDSF to respond within a specified time period shall be deemed a breach of or default under this Agreement by TDSF under any circumstances; (v) any submission receiving approval by TDSF will not constitute or imply a representation or belief by TDSF that such submission complies with any applicable Laws and/or other policies issued by any Governmental Entity, which compliance shall be the sole responsibility of Licensee and, in connection therewith, Licensee shall, at its sole cost and expense, obtain any required consents, approvals, permits, licenses or other authorizations that may be required by any Governmental Entity or applicable Law; (vi) any approval by TDSF of a submission may be expressed in an informal written manner, such as by way of a TDSF Representative placing his or her signature and the word "approved" directly upon the proposed submission or by a TDSF Representative providing written approval via electronic mail or fax; (vii) any materials required to be submitted in connection with any approval process under this Section 9.19 may be submitted to TDSF in parts or stages over time rather than submitting all of the required materials at one time (so long as Licensee shall note clearly in writing that such submission is a partial submission) and, upon Licensee's written request, TDSF will grant preliminary approvals or disapprovals (in accordance with the provisions of this Section 9.19) of any partial submission made under this Section 9.19 in order to permit Licensee to proceed to the next stage of the proposed activity, provided, that TDSF shall reserve its final approval or disapproval decision until all materials have been submitted for its review as required under this Section 9.19, and TDSF may modify or revoke any preliminary approval without obligation or liability to, or remedy or recourse by, Licensee, it being acknowledged and agreed by Licensee that any such preliminary approvals or disapprovals are solely an accommodation to Licensee at its request and that Licensee shall rely on any such preliminary approvals or disapprovals at its own risk; and (viii) any use of Disney Properties or Licensed Materials required in connection with any operational matter submitted by Licensee in connection with any approval process under this Section 9.19 shall be subject to the approval provisions set forth in Section 5 in addition to the approval provisions set forth in this Section 9.19.

10. CUSTOMER DATA.

10.1 Definition of Customer Data. As used in this Agreement, "**Customer Data**" shall mean all information (including, without limitation, names, addresses, e-mail addresses, telephone numbers, dates of birth, transaction data, demographic data, behavioral data, customer service data, correspondence and other documents and information) obtained from customers and maintained in Licensee's or its Affiliates' books and records in connection with (i) their purchases of Disney Merchandise at the Facilities or through the Internet Store and (ii) any other transactions entered into by such customers at the Facilities or through the Internet Store (e.g., Internet Store registration, sweepstakes registrations, customer surveys), in each case to the extent obtained in accordance with any applicable Laws, the Disney Privacy Policy and any Customer Elections. The Customer Data shall be treated, kept and maintained by each party as Confidential Information in accordance with the terms of Section 17.2, subject to each party's rights as set forth in this Section 10.

10.2 Ownership and Use of Customer Data.

10.2.1 During the Term. During the Term only, TDSF and Licensee shall be deemed to be the joint owners of the Customer Data, provided, that (i) Licensee shall use the Customer Data solely for purposes of operating the Business and fulfilling its obligations under this Agreement, (ii) TDSF and its Affiliates may use the Customer Data for any business purpose of TDSF or any of its Affiliates, provided, that TDSF and its Affiliates shall not use the Customer Data obtained hereunder for purposes of marketing, advertising or promoting the DDM Business or any Primary Disney Retail Store, and (iii) any use by Licensee or TDSF (or any of their respective Affiliates) of the Customer Data shall be in compliance with all applicable Laws, the Disney Privacy Policy and all Customer Elections. Without limiting the foregoing, Licensee shall not (a) Transfer or otherwise provide to any third party (a "**Data Transfer**") any Customer Data, other than to (I) TDSF or any of its Affiliates or (II) any third party agents who are providing services to Licensee or any of its Affiliates in connection with the operation of the Business, provided, that Licensee shall ensure that each such third party agent shall (A) obtain no ownership rights or interests in such Customer Data, (B) return such Customer Data to Licensee after it has provided services in connection with the Business, (C) be subject to the same restrictions on Data Transfers, solicitations, marketing, advertising and promotional campaigns, and other uses as apply to Licensee under this Section 10.2.1 and to confidentiality provisions with respect to such Customer Data reasonably comparable to the provisions set forth in Section 17.2, and (D) keep and maintain such Customer Data in accordance with all applicable Laws, the Disney Privacy Policy and all Customer Elections, or (b) unless otherwise approved by TDSF in accordance with Section 5, use any Customer Data for any type of solicitation, any marketing, advertising or promotional campaign, or any use not related to the operation of the Business.

10.2.2 Following Expiration or Termination. Upon the date of expiration or earlier termination of this Agreement, (i) TDSF shall be, and be deemed to be, the sole and exclusive owner of the Customer Data, (ii) Licensee shall, as soon as reasonably practicable, provide to TDSF, at Licensee's sole cost and expense and in such manner and in such formats as TDSF reasonably requests, all Customer Data that Licensee has not previously provided to TDSF in accordance with Section 10.3, and (iii) following its completion of the actions set forth in subparagraph (ii) of this Section 10.2.2, Licensee shall destroy and/or delete all Customer Data from its books, records and databases, except to the extent Licensee is required to maintain any Customer Data

pursuant to applicable Law (in which event Licensee shall only retain and use such retained Customer Data as and to the extent required by applicable Law).

10.2.3 Data Obtained Independently by TDSF. Nothing contained in this Section 10 or elsewhere in this Agreement shall apply to, or limit or prohibit the use in any manner of, any information or data owned or held by TDSF or any of its Affiliates to the extent such information or data has been independently obtained by TDSF or any of its Affiliates from a source other than Licensee or any of its Affiliates or the Business, even if such information or data is duplicative of Customer Data.

10.3 Provision of Information by Licensee to TDSF. During the Term, (i) on a Retail Monthly basis within twenty (20) Business Days following the end of each Retail Month during the Term in respect of the preceding Retail Month, Licensee shall provide updated Customer Data to TDSF, including, without limitation, all new names and related information acquired during the preceding Retail Month, at Licensee's sole cost and expense and in such manner and in such formats as TDSF reasonably requests, and (ii) Licensee shall take all such actions as TDSF reasonably requests to facilitate such provision of Customer Data; provided, that all actions by Licensee pursuant to this Section 10.3 shall be subject to all applicable Laws, the Disney Privacy Policy and all Customer Elections.

10.4 Approval of Direct Marketing Activities. Licensee acknowledges and agrees that any direct marketing activities conducted by Licensee or its Affiliates in connection with the Business, including, without limitation, mail, telephone or internet solicitations and activities relating to the Internet Store, whether or not using Customer Data and/or Licensed Materials, shall require the prior written consent of TDSF in each instance pursuant to Section 5. In connection with any such direct marketing activities conducted by Licensee or its Affiliates in connection with the Business, Licensee shall be entitled to use, in addition to Customer Data, comparable information obtained from customers of the business of TCP and its Affiliates (other than the Licensee Entities), subject to Licensee's compliance with applicable Law, any privacy elections made by such customers and any privacy policy applicable to such information and provided that Licensee's use of such customer data of TCP shall not by itself provide Licensee with any rights of ownership therein. Notwithstanding the foregoing, none of TCP or its Affiliates (other than the Licensee Entities) shall have any right to use Customer Data in connection with direct marketing activities conducted by TCP or such Affiliates or any other activities, except and only to the extent approved in writing by TDSF in its sole discretion, which approval may be conditioned upon TCP's and such Affiliates' compliance with certain limitations and restrictions, including, without limitation, the time periods during which such direct marketing activities may occur and the frequency and content of such direct marketing activities.

11. OWNERSHIP OF CERTAIN TECHNOLOGY AND PRODUCT DESIGN ELEMENTS.

11.1 Definitions. As used herein, the following terms have the meanings set forth below:

"**Non-Disney Technology and Elements**" shall mean, collectively, (i) all proprietary technology embedded in the Disney Merchandise and developed specifically for the Business, including, without limitation, any related specifications, functional requirements, documentation, copyrights and copyright applications, patents and patent applications, trade secret rights, trademarks and trademark applications (for the name(s) of the technology itself as opposed to the name(s) of the Disney Merchandise in which it is embedded) and other related intellectual property rights, and (ii) the style, design, size, shape, color, trade dress, industrial designs, merchandise designs, merchandise tools (i.e., molds, dies, etc.), appearance and other comparable aesthetic features of the Disney Merchandise (collectively, the "**Product Design Elements**"), including, without limitation, any related copyrights and copyright applications, patents and patent applications, inventions (whether or not patentable), trade secret rights, trademarks and trademark applications (for the name(s) of the Product Design Element itself as opposed to the name(s) of the Disney Merchandise in which it is embedded) and other related intellectual property rights (provided, that this subparagraph (ii) shall not include any Product Design Elements that are based on, embody, contain, feature, display, reflect or express, directly or indirectly, in whole or in part, by direct reference or by inference (e.g., by shape or outline but without specific features), any of the Licensed Materials or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or any of its Affiliates, which Product Design Elements shall be, and be deemed to be, solely and exclusively owned by TDSF and shall be reserved to TDSF with unlimited rights to use and exploit the same at any time (whether during the Term or thereafter) with no duty to account to Licensee and shall be otherwise subject to the provisions of this Agreement as "Licensed Materials," including, without limitation, Section 4.4).

"**Product Trademarks**" shall mean any and all names, brands, trademarks, logos, symbols or other proprietary designations or intellectual property used to identify, and developed specifically for, the Disney Merchandise, including, without limitation, all registrations thereof, applications to register the same, common law rights therein and the goodwill associated therewith; provided, that "Product Trademarks" shall not include (in whole or in part) any names, brands, trademarks, logos, symbols or other proprietary designations or intellectual property that are owned by TDSF or any of its Affiliates separately and independently from this Agreement (such as, by way of example and without limitation, the Licensed Materials).

For purposes of illustration only and without limitation, if an Article of Disney Merchandise consisted of a toddler's cup with a specially designed no-drip lid, a cup handle shaped like a generic trumpet (without reference to any Licensed Materials), and a carrying case shaped like the ears of Mickey Mouse (but without the features of Mickey Mouse's face), and such Disney Merchandise is called "Dizzy's No-Drip Cup", then (i) the no-drip lid and the generic trumpet-shaped handle would be Non-Disney Technology and Elements, (ii) the Mickey Mouse-inspired carrying case would constitute Licensed Materials and would not be Non-Disney Technology and Elements (even though it does not bear the exact features of Mickey Mouse), and (iii) the name "Dizzy's No-Drip Cup" would be a Product Trademark.

11.2 Non-Disney Technology and Elements Ownership and License Rights. As between TDSF and Licensee, subject to the rights of any licensors or other third parties:

11.2.1 Licensee shall be, and be deemed to be, the sole and exclusive owner of all Non-Disney Technology and Elements with respect to which substantially all development costs and expenses have been borne by Licensee and/or any of its Affiliates; provided, that, both during the Term and thereafter, (i) Licensee shall, upon the request of TDSF or any Other Disney Store Operator, grant TDSF and its Affiliates (but, for the avoidance of doubt, not any third party licensees of TDSF or its Affiliates within the Territory) or any Other Disney Store Operator and its Affiliates, respectively, a non-exclusive license to use any such Non-Disney Technology and Elements at a fair-market royalty rate to be negotiated in good faith by such parties (or any of their respective Affiliates), provided, that TDSF shall not, and shall not permit its Affiliates to, sublicense any rights granted thereto pursuant to this subparagraph (i) of this Section 11.2.1 to any of their respective third party licensees within the Territory (but, for purposes of clarification, TDSF and its Affiliates shall be permitted to sublicense any rights granted thereto pursuant to this subparagraph (i) of this Section 11.2.1 to any of their respective third party licensees outside of the Territory), and (ii) Licensee shall be permitted to license any such Non-Disney Technology and Elements to third parties within or outside of the Territory for use in connection with consumer products and merchandise that are not Disney Merchandise so long as such Non-Disney Technology and Elements are not, as determined by TDSF in its business judgment, likely to be perceived by the public as closely associated with or attributable to, as applicable, Disney Merchandise, Licensed Materials, any Disney Properties, any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or any of its Affiliates, the Facilities or the Internet Store;

11.2.2 TDSF shall be, and be deemed to be, the sole and exclusive owner of all Non-Disney Technology and Elements with respect to which substantially all development costs and expenses have been borne by TDSF and/or any of its Affiliates; provided, that, during the Term only, TDSF shall, upon Licensee's request, grant Licensee and its Affiliates a non-exclusive license to use any such Non-Disney Technology and Elements solely for purposes of carrying out Licensee's obligations under this Agreement, at a fair-market royalty rate to be negotiated in good faith by the parties hereto (or any of their respective Affiliates), provided, that, for purposes of clarification, (i) Licensee shall not, and shall not permit its Affiliates to, sublicense any rights granted thereto pursuant to this Section 11.2.2 to any Person, and (ii) TDSF shall be permitted to license any such Non-Disney Technology and Elements to any Person within or outside of the Territory, including, without limitation, a Person who competes directly or indirectly with Licensee or its Affiliates; and

11.2.3 With respect to any Non-Disney Technology and Elements that are jointly developed by TDSF or any of its Affiliates, on the one hand, and Licensee or any its Affiliates, on the other hand (for these purposes, "joint development" meaning that each party has devoted a material amount of resources, whether in the form of technical expertise, personnel, financial resources or otherwise, to the development of the Non-Disney Technology and Elements), Licensee and TDSF shall be deemed to be the joint owners of such Non-Disney Technology and Elements, each with unlimited rights to use, exploit and sublicense the same so long as, in the case of any such sublicense by Licensee, such Non-Disney Technology and Elements are not, as determined by TDSF in its business judgment, likely to be perceived by the public as closely associated with or attributable to, as applicable, Disney Merchandise, Licensed Materials, any Disney Properties, any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or any of its Affiliates, the Facilities or the Internet Store.

11.3 Product Trademark Ownership. As between TDSF and Licensee, subject to the rights of any licensors or other third parties, TDSF shall be, and be deemed to be, the sole and exclusive owner of all Product Trademarks, which are reserved to TDSF with unlimited rights to use and exploit the same at any time (whether during the Term or thereafter) and with no duty to account to Licensee, provided, that, during the Term and within the Territory only, TDSF hereby grants to Licensee and its Affiliates a non-exclusive, royalty-free license to use all such Product Trademarks solely for purposes of carrying out Licensee's obligations under the terms of this Agreement.

11.4 Further Assurances. Each of the parties hereto agrees to execute and deliver to the other party such assignments and other conveyance documents as may be required and reasonably requested from time to time by the other party to confirm the other party's ownership of Non-Disney Technology and Elements and Product Trademarks.

11.5 Survival of Section. The provisions of this Section 11 shall survive the expiration or earlier termination of this Agreement indefinitely.

12. INDEMNIFICATION.

12.1 Indemnification by Licensee. Each of TDS USA and TDS Canada, jointly and severally, shall defend, indemnify and hold TDSF and each of its Affiliates and the officers, directors, agents, representatives, employees, successors and assigns of each, forever harmless from and against any and all third-party claims, damages, losses, liabilities, obligations, settlements, injunctions, suits, actions, proceedings, liens, demands, charges, fines, penalties, costs and expenses of every kind and nature (whether based on tort, breach of contract, product liability, patent or copyright infringement or otherwise), including, without limitation, reasonable fees and expenses of attorneys and other professionals and disbursements that may be imposed on, incurred by or asserted against the Persons hereby required to be indemnified (but not against any of the same to the extent that a negligent act or omission or willful misconduct of any such Person was the cause of same) (collectively, "Loss"), arising directly or indirectly from, out of or based on:

12.1.1 any failure by Licensee to perform any of the agreements, terms, covenants or conditions of this Agreement to be performed by Licensee or any breach of any representation or warranty made by Licensee in this Agreement, including, without limitation, any Material Breach, any Licensee Infringing Use and/or any use of any music or film clip rights acquired from TDSF

or its Affiliates in connection with this Agreement that constitutes an infringing use thereof or that is in violation of this Agreement or in violation of any Contract entered into in connection with such music or film clip rights; or

12.1.2 the use by TDSF or its Affiliates of Licensee's names, brands, trademarks, logos, symbols, characters, designs, copyrights, materials, plans, ideas or other proprietary designations or intellectual property, provided, that such use was in accordance with the terms and conditions of this Agreement or as otherwise permitted by Licensee; or

12.1.3 any applicable Taxes (including, without limitation, sales, use, withholding (imposed by Canada or any other non-U.S. taxing jurisdiction), value-added or other similar Taxes) arising in connection with the payment of the Licensee Payments or other payments due to TDSF hereunder by Licensee or in connection with this Agreement, regardless of whether such Taxes must be collected by TDSF or its Affiliates on behalf of the applicable taxing authority and regardless of whether Licensee shall challenge the assessment or amount of such Taxes, except for any local, state, provincial or federal income Taxes (or franchise, gross receipts or other similar Taxes imposed in lieu of net income Taxes), other than withholding Taxes imposed by Canada or any other non-U.S. taxing jurisdiction, payable by TDSF or its Affiliates on, or in respect of, the Licensee Payments; or

12.1.4 the creation, development, manufacture, sourcing, purchase, offer for sale, sale or use of any Disney Merchandise or any other products or services of Licensee or its Affiliates, whether intended or unintended, and any injury to person or property or illness or death allegedly resulting therefrom, including, without limitation, (i) the manufacture, assembly and delivery of such Disney Merchandise or other products or services, (ii) any alleged deficiency or inadequacy in any instructions, warnings, labels or other materials included with any such Disney Merchandise or other products or services, (iii) the fitness of any such Disney Merchandise or other products or services for its intended use by consumers, (iv) any defect in design, material or workmanship of such Disney Merchandise or other products or services, (v) any misbranding, adulteration or unsafe feature of such Disney Merchandise or other products or services, (vi) any failure of such Disney Merchandise or other products or services to comply with any applicable Laws, including, without limitation, Laws pertaining to articles, materials or substances banned from commerce into or within the Territory, (vii) any breach of any Manufacturer's Agreement or Manufacturer's MOU by any Manufacturer or Licensee; or (viii) any name, brand, trademark, trade name, trade dress, logo, symbol, character, patent, copyrighted work, trade secret, music right, film clips or other proprietary designation or intellectual property used in connection with the Disney Merchandise or such other product or service (other than the Licensed Materials to the extent and only to the extent to which TDSF has indemnified Licensee pursuant to Section 12.2.2); or

12.1.5 the maintenance, management, supplying, administering and operation of the Business Properties and the Business and all activities related thereto, and any injury to person or property or illness or death allegedly resulting therefrom; or

12.1.6 the staffing of the Business Properties and the Business and all activities related thereto, including, without limitation, the compensation, hiring and termination of Licensee Employees and any other activities described in Section 9.4.1; or

12.1.7 any breach or violation of or failure to comply with any representation, warranty, term, covenant or condition contained in any Lease Agreement or other Contract of Licensee or its Affiliates pertaining to the Business, including, without limitation, reimbursement of TDSF and/or its Affiliates for any amounts paid by any of them under any guarantee of a Lease Agreement; or

12.1.8 the conduct of any marketing, advertising or promotional activity or sales process hereunder by or on behalf of Licensee or its Affiliates, including, without limitation, the production and broadcast of any television or radio commercials in connection therewith, direct-to-consumer solicitations via mail, email or otherwise, any marketing, advertising or promotion on or through the Internet Store and the promotion, advertising, marketing, offering for sale and sale of Theme Park Admission Passes; or

12.1.9 any negligent act or omission or willful misconduct by Licensee or its Affiliates, or the officers, directors, agents or employees of each, in connection with its or their performance relating to this Agreement; or

12.1.10 the operation by Licensee of the Facilities or by TCP or its Affiliates, other than Licensee, of any retail location or other venue of TCP or such Affiliates;

provided, that, notwithstanding the foregoing, TDS USA and TDS Canada shall not be required to defend, indemnify or hold TDSF, its Affiliates or the officers, directors, agents, representatives, employees, successors and assigns of each harmless from or against any third-party Loss arising from, out of or based on any of the foregoing matters if and only if and only to the extent to which TDSF or any of its Affiliates is required to indemnify Licensee, any of its Affiliates or the officers, directors, agents, representatives, employees, successors and assigns of each with respect to any such matters pursuant to the terms of the Acquisition Agreement or Section 12.2 of this Agreement.

12.2 Indemnification by TDSF. TDSF shall defend, indemnify and hold Licensee and each of its Affiliates and the officers, directors, agents, representatives, employees, successors and assigns of each, forever harmless from and against any and all third-party Loss arising directly or indirectly from, out of or based on:

12.2.1 any failure by TDSF to perform any of the agreements, terms, covenants or conditions of this Agreement to be performed by TDSF or any breach of any representation or warranty made by TDSF in this Agreement; or

12.2.2 use of the Disney Properties and the Licensed Materials by Licensee, but if and only if (A) such use was in strict accordance with the terms and conditions of this Agreement (and in the exact form and manner approved hereunder by TDSF) and (B) either (i) such use infringes the copyright of any third party or (ii) such use consists of the use of the name "Disney"

or the designs of the "Mickey Mouse," "Minnie Mouse," "Donald Duck," "Daisy Duck" and "Goofy" animated characters and it infringes the trademark of a third party. In the case of this Section 12.2.2, (a) Loss shall not include lost profits and (b) except as specifically provided under subparagraph (B)(ii) of this Section 12.2.2, no warranty or indemnity is being given by TDSF with respect to any Loss arising from any claim that use of the Disney Properties or the Licensed Materials or any other proprietary designations or intellectual property owned by or licensed to TDSF or any of its Affiliates on or in connection with the Disney Merchandise, the FF&E Materials, the Marketing Materials or any other materials approved hereunder by TDSF infringes on any trademark or other right of any third party or otherwise constitutes unfair competition; or

12.2.3 any local, state, provincial or federal income Taxes (or franchise, gross receipts or other similar Taxes imposed in lieu of net income Taxes), other than withholding Taxes imposed by Canada or any other non-U.S. taxing jurisdiction, payable by TDSF or its Affiliates on, or in respect of, the Licensee Payments; or

12.2.4 the operation by TDSF or its Affiliates of any Theme Park or other retail or entertainment venue that is solely owned and controlled by TDSF or its Affiliates; or

12.2.5 **; or

_____

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

12.2.6 any negligent act or omission or willful misconduct by TDSF or its Affiliates, or the officers, directors, agents or employees of each, in connection with its or their performance relating to this Agreement;

provided, that, notwithstanding the foregoing, TDSF shall not be required to defend, indemnify or hold Licensee, its Affiliates or the officers, directors, agents, representatives, employees, successors and assigns of each harmless from or against any third-party Loss arising from, out of or based on any of the foregoing matters if and only if and only to the extent to which TCP, Licensee Parent, Canadian Parent or Licensee is required to indemnify TDSF, any of its Affiliates or the officers, directors, agents, representatives, employees, successors and assigns of each with respect to any such matters pursuant to the terms of the Acquisition Agreement or Section 12.1 of this Agreement.

12.3 Procedures of Indemnification.

12.3.1 Either party seeking indemnification under this Agreement (the "**Indemnified Party**") shall give notice to the party required to provide indemnification hereunder (the "**Indemnifying Party**") promptly after the Indemnified Party has actual knowledge of any claim as to which indemnity may be sought hereunder, and the Indemnified Party shall permit the Indemnifying Party (at the expense of the Indemnifying Party), if it acknowledges in writing its liability with respect to defense costs, to assume the defense of any claim or litigation resulting therefrom; provided, that (i) counsel for the Indemnifying Party who shall conduct the defense of such claim or litigation shall be satisfactory to the Indemnified Party in its business judgment; (ii) the Indemnified Party may participate in such defense, represented by counsel of the Indemnified Party's own choosing, but only at the Indemnified Party's own cost and expense, except with respect to any claim or litigation by or with a Governmental Entity involving or relating to any Tax matter; and (iii) the omission by the Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent that such omission results in a failure of actual notice to the Indemnifying Party and the Indemnifying Party is actually prejudiced or damaged as a result of such failure to give notice.

12.3.2 The Indemnifying Party shall not, except with the written consent of the Indemnified Party, consent to entry of any judgment or administrative order or enter into any settlement or a compromise that would bind the Indemnified Party if such judgment, administrative order, settlement or compromise (i) could affect the validity or enforceability of any intellectual property rights or other business interests of the Indemnified Party, (ii) does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Party of a release from all liability with respect to such claim or litigation, or (iii) would require any admission of wrongdoing on the part of the Indemnified Party.

12.3.3 Subject to TDSF's rights pursuant to Section 4.8 with respect to Disney IP Claims, in the event that the Indemnified Party shall in its business judgment determine that the conduct of the defense of any claim subject to indemnification hereunder or any proposed settlement of any such claim by the Indemnifying Party might be expected to affect adversely the Indemnified Party's intellectual property rights or ability to conduct future business, the Indemnified Party shall have the right at all times to take over and assume control over the defense, settlement, negotiations or lawsuit relating to any such claim at the sole cost and expense of the Indemnifying Party.

12.3.4 In the event that the Indemnifying Party does not acknowledge in writing its indemnification obligation hereunder and accept the defense of any matter as above provided within ten (10) Business Days following written notice from the Indemnified Party of any such matter, the Indemnified Party, without waiving any rights under this Section 12, shall have the full right to defend against any such claim or litigation at the reasonable expense of the Indemnifying Party.

12.4 Survival. The provisions of this Section 12 shall survive the expiration or earlier termination of this Agreement for three (3) years following the date of such expiration or termination of this Agreement.

13. TERMINATION BY TDSF.

Without prejudice to any other right or remedy available to TDSF at law or in equity in respect of any event described below (but subject to the limitations set forth in Section 21.22), this Agreement may be terminated by TDSF by written notice to Licensee upon the occurrence of one (1) or more of the following events:

13.1 Royalty Breach. Either (i) Licensee shall commit any Royalty Breach that is not Cured by Licensee, (ii) during the first twenty-four (24) Retail Months of the Term, Licensee shall commit four (4) or more Royalty Breaches, whether Cured or Uncured by Licensee, or (iii) during any rolling twenty-four (24) Retail Month period during the remainder of the Term, Licensee shall commit three (3) or more Royalty Breaches, whether Cured or Uncured by Licensee; or

13.2 Misuse of Licensed Materials. During any rolling twenty-four (24) Retail Month period during the Term, either (i) Licensee shall commit ** or more Licensee Infringing Uses that are not Cured by Licensee, or (ii) Licensee shall commit ** or more Licensee Infringing Uses, whether Cured or Uncured by Licensee; or

_____

*** This information is confidential and has been omitted and separately filed with the Securities and Exchange Commission.*

13.3 Material Breach. During any rolling twenty-four (24) Retail Month period during the Term, either (i) Licensee shall commit five (5) or more Material Breaches that are not Cured by Licensee or (ii) Licensee shall commit seven (7) or more Material Breaches, whether Cured or Uncured by Licensee, in each case other than any breaches described in Section 13.1, 13.2, 13.9 or 13.10; or

13.4 Assignment. Any purported assignment or Transfer of Licensee's rights, benefits or obligations hereunder shall be made or deemed to be made that is in violation of this Agreement; or

13.5 Change of Control. Following the Effective Date, (i) Licensee, Licensee Parent, Canadian Parent or any of their respective Subsidiaries shall, in any single transaction or series of related transactions, Transfer (by lease, management or operation agreement, assignment, sale or otherwise) all or substantially all of its properties and assets to a Qualified Person without a Guaranty Assumption and, in the case of a Transfer involving Licensee Parent, Canadian Parent or Licensee, a License Assumption or to any Disqualified Person; (ii) TCP or any of its Affiliates (other than the Licensee Entities) shall, in any single transaction or series of related transactions, Transfer (by lease, management or operation agreement, assignment, sale or otherwise) all or substantially all of its properties and assets used primarily in the Business to a Qualified Person without a Guaranty Assumption or to any Disqualified Person; (iii) Licensee, Licensee Parent, Canadian Parent, TCP or any of their respective Affiliates shall enter into any merger, consolidation, amalgamation, combination or other comparable form of corporate transaction with a Qualified Person without a Guaranty Assumption and a License Assumption or with any Disqualified Person; (iv) any Licensee Securities or Licensee Affiliate Securities shall be Transferred by any Person other than pursuant to a Permitted Transfer; or (v) any TCP Securities or TCP Affiliate Securities shall be Transferred by any Person other than pursuant to a Permitted Transfer; provided, that, in the event that TDSF shall have a right of termination under the preceding subparagraph (v) of this Section 13.5, (A) the termination of this Agreement pursuant to this Section 13.5 shall not occur until the date that is twelve (12) months from the date Licensee or its Affiliates knew or (based upon diligent inquiry) should reasonably have known of such prohibited Transfer so long as, until such termination date, TCP shall use its good faith, commercially reasonable efforts to Transfer all of its right, title and interest in and to Licensee Parent, Licensee, Canadian Parent and their respective Subsidiaries, the Facilities, the Internet Store and the Business (whether by Transfer of all outstanding Licensee Securities, Licensee Parent Securities and/or Canadian Parent Securities or substantially all of Licensee's properties and assets or otherwise) in a manner that does not violate the terms of subparagraphs (i), (iii) or (iv) of this Section 13.5, as applicable, such efforts of TCP to be demonstrated to TDSF's satisfaction in its business judgment on at least a monthly basis, (B) the time period in the preceding subparagraph (A) shall be extended by three (3) months in the event that, prior to the expiration of the initial twelve (12) month period under the preceding subparagraph (A), TCP or its Affiliates shall have in good faith entered into a written, binding, definitive agreement with an unrelated third party pertaining to a Transfer as contemplated by the preceding subparagraph (A), which agreement shall be subject only to customary closing conditions for a transaction of that nature (e.g., regulatory approvals, material accuracy of representations and warranties, landlord consents), and (C) so long as any such Transfer as contemplated by the preceding subparagraph (A) is consummated within the time period specified in such subparagraph (or any extension thereof pursuant to the preceding subparagraph (B)), then TDSF's right of termination under subparagraph (v) of this Section 13.5 shall expire upon the consummation of such Transfer.

13.6 Insolvency. Either (i) any of (a) TDS USA, TDS Canada, Licensee Parent, Canadian Parent or any of their respective Subsidiaries, (b) TCP, any Significant Subsidiary of TCP or any Subsidiary of TCP that is engaged in the Business in any manner or (c) any Parent Affiliate of TCP shall become Insolvent or shall make an assignment for the benefit of creditors; or (ii) any action shall be brought by any such Person seeking its dissolution or liquidation of any of its assets or seeking the appointment of a trustee, interim trustee, receiver or other custodian for any of its property; or (iii) any such Person shall commence a voluntary proceeding under the Federal Bankruptcy Code; or (iv) any reorganization or arrangement proceeding is instituted by any such Person for the settlement, readjustment, composition or extension of any of its debts upon any terms; or (v) any action or petition shall otherwise be brought by any such Person seeking similar relief or alleging that it is Insolvent or unable to pay its debts as they mature; or (vi) any action shall be brought against any such Person seeking its dissolution or liquidation of any of its assets, or seeking the appointment of a trustee, interim trustee, receiver or other custodian for any of its property, and any such action is consented to or acquiesced in by any such Person or is not dismissed within two (2) months after the date upon which it was instituted; or (vii) any proceeding under the Federal Bankruptcy Code shall be instituted against any such Person, and (x) an order for relief is entered in such proceeding or (y) such proceeding is consented to or acquiesced in by any such Person or is not dismissed within two (2) months after the date upon which it was instituted; or (viii) any reorganization or arrangement proceeding shall be instituted against any such Person for the settlement, readjustment, composition or extension of any of its debts upon any

terms, and such proceeding is consented to or acquiesced in by any such Person or is not dismissed within two (2) months after the date upon which it was instituted; or (ix) any action or petition shall otherwise be brought against any such Person seeking similar relief or alleging that it is Insolvent, unable to pay its debts as they mature or generally not paying its debts as they become due, and such action or petition is consented to or acquiesced in by any such Person or is not dismissed within two (2) months after the date upon which it was brought; or

13.7 Reputational Decline. Licensee or any of its Affiliates engage in conduct that is generally viewed by the public as offensive or reprehensible from a legal or moral perspective and such conduct results in a material impairment or diminution of the good name, image or brand of TDSF or any of its Affiliates or of the Disney Properties, the Licensed Materials or any other names, brands, trademarks, logos, symbols, characters or other proprietary designations or intellectual property of TDSF or any of its Affiliates, in each case as determined by TDSF in its business judgment. In order to exercise the right of termination under this Section 13.7, TDSF shall provide written notice to Licensee within two (2) months following the date on which TDSF knows of such conduct. Any failure to provide such written notice within such two (2) month period shall constitute a waiver of the right to terminate this Agreement under this Section 13.7 with respect to the respective conduct in that particular instance only. In the event that Licensee disputes whether TDSF has a right to terminate this Agreement under this Section 13.7, Licensee shall, within twenty (20) Business Days following written notice from TDSF, provide TDSF with written notice of such dispute, whereupon the parties shall, within five (5) Business Days following such written notice from Licensee, commence the arbitration process specified under Section 21.23 with respect thereto. In connection therewith, within two (2) Business Days following the selection of the Arbitrator for such dispute in the manner specified in Section 21.23, the parties shall jointly submit a written request to such Arbitrator requesting that such dispute be resolved with extraordinary expedition in accordance with Section 21.23 and in any event within twenty (20) Business Days following the date of such request. The sole dispute to be resolved in connection with any proceeding submitted for resolution under Section 21.23 in accordance with the provisions of this Section 13.7 shall be whether or not TDSF has the right to terminate this Agreement pursuant to the terms of this Section 13.7. Notwithstanding anything contained herein to the contrary, in the event that TDSF seeks to terminate this Agreement pursuant to this Section 13.7, such termination shall not become effective until twenty (20) Business Days following the earliest to occur of (i) the failure of Licensee to notify TDSF of a dispute hereunder within twenty (20) Business Days following TDSF's notice of termination, (ii) Licensee's written acknowledgement that TDSF is entitled to terminate this Agreement under this Section 13.7, and (iii) the Arbitrator's final written determination that TDSF is entitled to terminate this Agreement pursuant to this Section 13.7; or

13.8 Material Breach or Termination of TCP Guaranty and Commitment. TCP or Licensee Parent shall breach or violate any material term, covenant or condition that is binding upon TCP or Licensee Parent under the TCP Guaranty and Commitment and shall fail to cure such breach within ten (10) Business Days following written notice of such breach from TDSF, Licensee or any of their respective Affiliates, or the TCP Guaranty and Commitment shall be terminated for any reason; or

13.9 Breach of Certain Representations, Warranties and Covenants. Either (i) Licensee shall breach or violate, in any respect, any of the representations and warranties set forth in Section 18.1, 18.2 or subparagraph (i) or (ii) of Section 18.3, which breach or violation is not Cured by Licensee and has or might reasonably be expected to have a material adverse effect on Licensee's ability to perform its obligations under this Agreement or the transactions contemplated by this Agreement, (ii) Licensee shall breach or violate, in any respect, the limitations set forth in Section 4.10.8 or (iii) Licensee, Licensee Parent or Canadian Parent shall breach or violate, in any respect, its obligations under the second sentence of Section 9.12.3. Notwithstanding anything to the contrary contained herein, Licensee acknowledges that Licensee, Licensee Parent and Canadian Parent shall have no right or opportunity to Cure any of the breaches or violations of their respective limitations and obligations described in subparagraph (ii) or (iii) of this Section 13.9 and, under such circumstances, TDSF shall be entitled to terminate this Agreement immediately upon three (3) Business Days' written notice to Licensee; or

13.10 Uncured Material Breach of Certain Covenants. Licensee shall commit any Material Breach of its obligations under Section 5.2.8, 6.3, 9.1, 9.8, 9.10.3, 9.13, 9.15.1, 10 or 21.2 or under the first sentence of Section 9.12.3, in each case that is not Cured by Licensee; or

13.11 Defaults under Indebtedness. Any of the Licensee Entities shall (i) default in making any payment of any principal of any Indebtedness on the due date with respect thereto, (ii) default in making any payment of any interest on any Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created, or (iii) default in the observance or performance of any other agreement or condition relating to any Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is, in the case of any of the preceding subparagraphs (i), (ii) or (iii) of this Section 13.11, to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, such Indebtedness to become due prior to its stated maturity or otherwise to become payable or any collateral securing such Indebtedness (including, without limitation, any inventory of any Licensee Entity) to be foreclosed upon or sold for purposes of satisfying such Indebtedness; provided, that, with respect to Indebtedness that is not in any manner secured by any of the properties, assets, Contracts (including, without limitation, this Agreement) or Business of Licensee or its Affiliates, a default, event or condition described in subparagraph (i), (ii) or (iii) of this Section 13.11 shall not at any time entitle TDSF to terminate this Agreement pursuant to this Section 13.11 unless, at such time, one (1) or more defaults, events or conditions of the type described in subparagraphs (i), (ii) and/or (iii) of this Section 13.11 shall have occurred and be continuing with respect to such unsecured Indebtedness with an aggregate outstanding principal amount of Five Hundred Thousand Dollars ($500,000) or more; or

13.12 Judgments. One (1) or more final, non-appealable judgments or decrees shall be entered against any of the Licensee Entities or any of their respective properties involving an aggregate liability (in excess of any applicable insurance as to which the relevant insurance company has acknowledged coverage) of Thirty-Five Million Dollars ($35,000,000) (the "**Judgment**

**Threshold**") or more, and such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within twenty (20) Business Days following the entry thereof, provided, that, beginning effective with the second (2nd) Contract Year and continuing through each and every Contract Year of the Term thereafter, the Judgment Threshold for each Contract Year shall be the Judgment Threshold for the immediately preceding Contract Year, as adjusted to reflect the increase, if any, in the CPI in accordance with the CPI Adjustment Methodology; or

13.13 Uninsured Losses. There shall occur any material loss, theft, damage or destruction of any property or assets of any of the Licensee Entities, which loss, theft, damage or destruction (i) until the end of the fourth (4th) Contract Year, results in an aggregate loss (in excess of any applicable insurance as to which the relevant insurance company has acknowledged coverage) of Thirty-Five Million Dollars ($35,000,000) (the "**Loss Threshold**") or more *or* could otherwise reasonably be expected to materially and adversely affect Licensee's ability to operate the Business, or (ii) following the end of the fourth (4th) Contract Year, results in an aggregate loss (in excess of any applicable insurance as to which the relevant insurance company has acknowledged coverage) equal to or greater than the Loss Threshold *and* could reasonably be expected to materially and adversely affect Licensee's ability to operate the Business, provided, that, beginning effective with the second (2nd) Contract Year and continuing through each and every Contract Year of the Term thereafter, the Loss Threshold for each Contract Year shall be the Loss Threshold for the immediately preceding Contract Year, as adjusted to reflect the increase, if any, in the CPI in accordance with the CPI Adjustment Methodology; or

13.14 Breaches of Material Contracts. Any of the Licensee Entities shall be in breach of one (1) or more material Contracts by which any of such Licensee Entities or any of their respective properties is bound and such breach or breaches result in an aggregate liability (in excess of any applicable insurance as to which the relevant insurance company has acknowledged coverage) of Thirty-Five Million Dollars ($35,000,000) (the "**Breach Threshold**") or more *and* could reasonably be expected to materially and adversely affect Licensee's ability to operate the Business, provided, that, beginning effective with the second (2nd) Contract Year and continuing through each and every Contract Year of the Term thereafter, the Breach Threshold for each Contract Year shall be the Breach Threshold for the immediately preceding Contract Year, as adjusted to reflect the increase, if any, in the CPI in accordance with the CPI Adjustment Methodology. For purposes of this Section 13.14, all Lease Agreements shall be deemed to be material Contracts.

13.15 Other Termination Rights. In addition, TDSF shall have the right to terminate this Agreement in accordance with Sections 21.2 and 21.3 of this Agreement.

14. TERMINATION BY LICENSEE.

Without prejudice to any other right or remedy available to Licensee at law or in equity in respect of any event described below (but subject to the limitations set forth in Section 21.22), this Agreement may be terminated by Licensee by written notice to TDSF upon the occurrence of one (1) or more of the following events:

14.1 Material Breach. During any rolling twenty-four (24) Retail Month period during the Term, either (i) TDSF shall commit five (5) or more Material Breaches that are not Cured by TDSF or (ii) TDSF shall commit seven (7) or more Material Breaches, whether Cured or Uncured by TDSF, in each case other than any breaches described in Section 14.4; or

14.2 Withdrawn or Retired Character Properties. At any time during the Term, TDSF shall have sold or, on a permanent basis (i.e., for a period of three (3) years or more), withdrawn, retired from usage or lost the usage of, in connection with Disney Merchandise hereunder, one (1) or more Character Properties that were featured or incorporated in Disney Merchandise that, during any one (1) of the three (3) most recently completed twelve (12) Retail Month periods prior to the date of such sale or permanent withdrawal, retirement or loss of use, accounted for fifty-one percent (51%) or more of Licensee's Net Retail Sales; or

14.3 Loss of Use of "Disney" Name. Following the Effective Date, TDSF and its Affiliates shall become permanently and irrevocably prohibited from using the "Disney" name in a manner that prevents Licensee from operating the Business, the Facilities and the Internet Store under the "Disney Store" name and from performing its other material obligations under this Agreement; or

14.4 Uncured Material Breach of Certain Covenants. TDSF shall commit two (2) or more Material Breaches of its obligations under (i) Section 6.2.2 or (ii) subparagraph (A) of Section 6.1, in each case that is not Cured by TDSF.

15. PURCHASE OF FACILITIES UPON TERMINATION.

15.1 Right to Purchase or Cause Purchase of Facilities; Notice Dates; Commencement of Purchase Process.

15.1.1 Right to Purchase. Upon the expiration or earlier termination of this Agreement, TDSF or any of its Affiliates shall have the right to purchase, or cause a third party (the "**Third Party Purchaser**") to purchase, one (1) or more of the Facilities (the Facilities designated in writing by TDSF to be purchased, the "**Designated Facilities**") through the process set forth in this Section 15 (the "**Purchase Process**"). For purposes hereof, each Designated Facility shall be deemed to include (i) all tenant improvements, furniture, fixtures and equipment, carpeting and flooring, shelving, appliances, lighting, décor, signage, displays, cut-outs, window strips, multimedia, check-out counters, registers and systems, information technology and systems, and other physical attributes located within or directly surrounding such Designated Facility; (ii) all inventories of Disney Merchandise located therein or allocated thereto; (iii) the employees at such Designated Facility; (iv) the Lease Agreement associated therewith; and (v) any other incidental assets or operations located directly in such Designated Facility. No Designated Facility shall be deemed to include (a) the corporate headquarters or other corporate offices or corporate employees of Licensee; (b) any Distribution Centers or distribution operations of Licensee; (c) any other Business Properties of Licensee that are not Facilities; (d)

the Internet Store, which shall be deemed to include all webpages and user interfaces of the Internet Store, all software and programming code for the Internet Store, including from the check-out process through the distribution center fulfillment and replenishment process, and all inventory set aside specifically for the Internet Store in the ordinary course of business; (e) any inventory located outside of any Designated Facility; (f) any Non-Disney Technology and Elements owned by Licensee in accordance with the terms hereof; or (g) any other assets or operations of Licensee not included directly within a Designated Facility (such assets and operations described in the preceding subparagraphs (a) through (g) being referred to herein collectively as the "**Overhead Assets and Operations**"); provided, that, at TDSF's election in its sole discretion, it shall be entitled to include all or any portion of the Overhead Assets and Operations in the Purchase Process by so designating all or such portion of the Overhead Assets and Operations in its Election Notice, in which event such Overhead Assets and Operations so designated by TDSF shall be treated for purposes of this Section 15 as one (1) "Designated Facility" to be purchased by TDSF, its Affiliates or a Third Party Purchaser, as the case may be, with the parties making such commercially reasonable adjustments to the Purchase Process set forth herein as may be necessary to accommodate such assets and operations in such process. During the Purchase Process, TDSF may elect, in its sole discretion, to add Facilities or Overhead Assets and Operations to, or to delete Facilities or Overhead Assets and Operations from, the Designated Facilities, for the benefit of itself, its Affiliates or any Third Party Purchaser. For purposes of clarification, the parties acknowledge and agree that none of the Disney Properties, the Licensed Materials or any other name, brand, trademark, logo, symbol, character or other proprietary designation or intellectual property of TDSF or its Affiliates will be offered for sale or sold through the Purchase Process.

15.1.2 No Obligation to Purchase. Notwithstanding anything contained in this Agreement to the contrary, and notwithstanding whether TDSF shall have exercised its right to commence the Purchase Process hereunder, neither TDSF nor any of its Affiliates shall be obligated to purchase, or cause a Third Party Purchaser to purchase, any of the Facilities or any Overhead Assets and Operations, and TDSF (or any of its Affiliates) or any Third Party Purchaser may withdraw from the Purchase Process at any time prior to the consummation thereof, without recourse or remedy by Licensee and without any abatement or reduction of any payments or other obligations hereunder. In the event that none of the Facilities or Overhead Assets and Operations is purchased by TDSF (or any of its Affiliates) or any Third Party Purchaser in accordance with the Purchase Process, all of the Facilities and the Overhead Assets and Operations shall continue to be held or owned solely by Licensee; provided, that, in such event, all of Licensee's rights and licenses to use the Licensed Materials and/or any other proprietary designations or intellectual property owned by or licensed to TDSF or any of its Affiliates shall terminate as provided in Section 16.

15.1.3 Notice of Exercise of Right. Either (i) no earlier than the date that is four (4) years, and no later than the date that is two (2) years and six (6) months, prior to the expiration date of the Term (as the Term may be extended from time to time pursuant to Section 2.2), unless by such date each of the parties shall have executed a definitive written agreement regarding renewal or extension of this Agreement pursuant to the negotiations under Section 2.2.2, or (ii) if this Agreement is terminated prior to the end of the Term by either party, then no later than the date that is three (3) months following the date of such termination, TDSF shall, if it so elects, provide written notice (the "**Election Notice**") to Licensee that TDSF (or any of its Affiliates) is exercising its right to purchase, or cause a Third Party Purchaser to purchase, one (1) or more Designated Facilities in accordance with the terms of this Section 15, which Election Notice shall identify such Designated Facilities (subject to TDSF's right to add thereto or delete therefrom pursuant to Section 15.1.1).

15.1.4 Commencement of Purchase Process. In the event that TDSF provides the Election Notice to Licensee in accordance with Section 15.1.3, the Purchase Process shall commence (i) on the date that is two (2) years prior to the expiration date of the Term (as the Term may be extended from time to time pursuant to Section 2.2) or (ii) if this Agreement is terminated prior to the end of the Term by either party hereto, then no later than the date that is six (6) months following the date of such termination (the date of such commencement of the Purchase Process, the "**Purchase Commencement Date**").

15.2 Appraisal and Bidding Process; Determination of Compensation.

15.2.1 Appraisal of Business. In the event that TDSF (or any of its Affiliates) elects to exercise its right to purchase, or cause a Third Party Purchaser to purchase, the Designated Facilities in accordance with the terms of this Section 15, then TDSF and Licensee shall cause the Designated Facilities to be appraised in accordance with the following procedures:

(a) Within ten (10) Business Days following the Purchase Commencement Date, each of Licensee and TDSF shall in writing provide the other party with the names of two (2) independent third party appraisers who are acceptable to Licensee or TDSF, respectively, and who are recognized as having the capability to appraise specialty retailers and who have had significant experience in performing such appraisals.

(b) Within five (5) Business Days following each party's provision of the names of such two (2) appraisers to the other party, each of Licensee and TDSF shall notify the other party in writing regarding whether one or both of such proposed appraisers are acceptable to Licensee or TDSF, respectively (provided, that each of Licensee and TDSF shall be required to deem acceptable at least one of the appraisers proposed by the other party), and, within five (5) Business Days following such notice, each of Licensee and TDSF shall select and engage one (1) appraiser that was acceptable to the other party to conduct an appraisal of the Designated Facilities hereunder (each such appraiser, an **"Appraiser,"** and, collectively, the **"Appraisers"**). Each Appraiser shall be required to (i) execute a confidentiality and non-disclosure agreement to be prepared by TDSF in a form reasonably satisfactory to TDSF and Licensee, and (ii) complete its appraisal of the Designated Facilities on or before the date that is three (3) months following the Purchase Commencement Date. Each party hereto shall bear all costs and expenses associated with the appraisal conducted by the Appraiser selected by such party.

(c) TDSF shall provide each Appraiser with a copy of this Agreement. Each party hereto shall cause its Appraiser to appraise the Designated Facilities in accordance with standard valuation methodology commonly used by purchasers

of specialty retail businesses (of a size and type comparable to the Designated Facilities) to determine the enterprise value of the Designated Facilities. The appraisal of the Designated Facilities shall also be conducted in accordance with the following assumptions and principles: (i) each Appraiser shall assume that all of the Designated Facilities that exist as of the date of such appraisal are being purchased; (ii) the terms and conditions of this Agreement, including, without limitation, all financial terms and conditions, the Licensee Payments, Licensee's right to use the Licensed Materials in accordance with the terms hereof, and all other material elements of the transactions contemplated hereby, will continue for the Designated Facilities for a period of fifteen (15) years (if the Purchase Process commences during the Initial Term) and ten (10) years (if the Purchase Process commences during any Renewal Term) (or, in the event that the right to purchase the Designated Facilities pursuant to the Purchase Process was triggered by an early termination of this Agreement by TDSF in accordance with the terms of Section 13 of this Agreement or by any proceeding under the Federal Bankruptcy Code or any other applicable bankruptcy Law, five (5) years), with no value assigned to any period thereafter; (iii) the Business will continue to operate on an ongoing basis in accordance with past practice for the 15-year, 10-year or 5-year period covered by the valuation in accordance with the preceding subparagraph (ii), including, without limitation, fully reflecting all requirements pertaining to maintenance of and capital improvements to the Designated Facilities and the liquidity and capital needs associated therewith; (iv) the enterprise valuation shall include an appropriate adjustment for corporate overhead expenses that would be required to be incurred and shared among all of the Designated Facilities as part of the operation of the chain, if such expenses are not already fully reflected by the inclusion of any Overhead Assets and Operations designated by TDSF to be included in the Purchase Process; and (v) no value will be assigned to tangible or intangible benefits that may accrue to any purchaser of the Designated Facilities as a result of its relationship with TDSF or any of its Affiliates (e.g., perceived marketplace validation or confirmation) or other potential business relationships with TDSF or any of its Affiliates that may accrue to a purchaser of the Designated Facilities other than those directly in connection with the Designated Facilities.

(d) The parties shall cooperate in good faith with each Appraiser and use commercially reasonable efforts to assist in the appraisals of the Designated Facilities, including, without limitation, providing the Appraisers with reasonable access, upon reasonable notice and during normal business hours, to the relevant personnel, facilities, books, records, documentation and other materials necessary to conduct the appraisals of the Designated Facilities, promptly and accurately responding to any questions or inquiries from the Appraisers and commencing the gathering of relevant books, records, documentation and other materials necessary for the appraisals promptly following the Purchase Commencement Date so as to enable the appraisals to be completed as soon as reasonably practicable.

(e) No later than three (3) months following the Purchase Commencement Date, each Appraiser shall be required to provide each of TDSF, Licensee and the other Appraiser with (i) its written estimate of the fair market value of the Designated Facilities taken as a whole and consisting of one unified enterprise (an **"FMV Appraisal"**) and (ii) a schedule that sets forth the Facility Appraisal Value for each of the Designated Facilities. For purposes of this Agreement, the **"Facility Appraisal Value"** of a Facility shall be equal to (a) the applicable Appraiser's FMV Appraisal (less the value, if any, such Appraiser assigns to any Overhead Assets and Operations included in the Purchase Process at TDSF's request, which amount shall be separately identified by such Appraiser) multiplied by (b) a fraction, the numerator of which is the Net Retail Sales generated by such Designated Facility during the Contract Year most recently completed prior to the Purchase Commencement Date and the denominator of which is the Net Retail Sales generated by all of the Designated Facilities during the Contract Year most recently completed prior to the Purchase Commencement Date.

15.2.2 Bidding Process. In addition to the appraisals contemplated by Section 15.2.1, TDSF may solicit bids for the purchase of the Designated Facilities from prospective Third Party Purchasers (including any Third Party Purchasers suggested or proposed by Licensee) in accordance with the following:

(a) TDSF shall, in its sole discretion, select the prospective Third Party Purchasers from which it will solicit bids for the Designated Facilities.

(b) TDSF shall provide each prospective Third Party Purchaser that has executed a confidentiality and non-disclosure agreement (which shall be prepared by TDSF in a form reasonably satisfactory to TDSF and Licensee) with such information regarding the Designated Facilities as it deems necessary or desirable in its business judgment in order to enable each such prospective Third Party Purchaser to submit a good faith bid for the Designated Facilities, provided, that such information shall include the same instructions provided to the Appraiser pursuant to subparagraphs (i) through (v) of Section 15.2.1(c) (and both Licensee and TDSF agree that each such prospective Third Party Purchaser may be provided with a copy of this Agreement by TDSF). Neither TDSF nor Licensee shall disclose the FMV Appraisals or the Facility Appraisal Values to any prospective Third Party Purchaser.

(c) Both TDSF and Licensee shall cooperate in good faith with each other and with each prospective Third Party Purchaser in connection with the potential purchase of the Designated Facilities. Throughout the Term and the Purchase Process, Licensee shall manage and operate the Business in good faith in a manner designed to preserve and maintain the integrity of the Purchase Process and the value of the Designated Facilities and the remainder of the Business. Without limiting the foregoing, in order to facilitate the purchase of the Designated Facilities by a Third Party Purchaser, Licensee shall at all times during the Term and the Purchase Process (i) preserve and maintain its ability, at the time of a Transfer of any Designated Facilities under this Section 15, to Transfer such Designated Facilities in the manner required hereunder, free and clear of any and all Encumbrances, other than and subject to the Lease Agreements applicable thereto; (ii) provide each prospective Third Party Purchaser with reasonable access, upon reasonable notice and during normal business hours, to the relevant personnel, facilities, books, records, documentation and other materials necessary to conduct due diligence with respect to the Designated Facilities and the remainder of the Business and perform a thorough valuation of the Designated Facilities and the remainder of the Business; (iii) promptly and accurately respond to any questions or inquiries from each prospective Third Party Purchaser; (iv) refrain from taking

any actions or making any statements that would jeopardize the sale or Transfer of the Designated Facilities pursuant to the Purchase Process; and (v) take such additional steps and perform such additional actions as TDSF or any prospective Third Party Purchaser may reasonably request in connection with the purchase of the Designated Facilities.

(d) Each prospective Third Party Purchaser that desires to submit an offer for the Designated Facilities shall submit such offer (each, a **"Third Party Offer"**) in writing, which offer must contain, among other things, (i) a list of the Facilities and/or Overhead Assets and Operations that such prospective Third Party Purchaser desires to purchase and (ii) the price that such prospective Third Party Purchaser is willing to pay for such Facilities and/or Overhead Assets and Operations.

(e) Following its receipt of any Third Party Offers from prospective Third Party Purchasers, TDSF shall have the right, in its sole discretion, to negotiate among the prospective Third Party Purchasers, solicit additional offers from either the original prospective Third Party Purchasers or, if TDSF has received fewer than three (3) Third Party Offers from prospective Third Party Purchasers, from one (1) additional round of prospective Third Party Purchasers, and otherwise administer the Purchase Process among the prospective Third Party Purchasers in any manner it deems necessary or desirable, provided, that TDSF shall at all times comply with the terms of this Section 15.

(f) At the conclusion of the foregoing bidding process, TDSF shall have the right either (i) to purchase the Designated Facilities itself (or through any of its Affiliates) or (ii) to select, in its sole discretion, the Third Party Offer of one of the prospective Third Party Purchasers.

15.2.3 Compensation for Designated Facilities. If TDSF elects to proceed with a purchase of the Designated Facilities from Licensee either by itself (or any of its Affiliates) or through a Third Party Purchaser, then the compensation to the parties hereto in connection with such purchase shall be calculated as follows:

(a) For purposes of this Agreement, (i) the **"Licensee Compensation Amount"** shall be equal to the sum of the two (2) FMV Appraisals from the Appraisers divided by two (2); and (ii) in the case of a purchase of the Designated Facilities by a Third Party Purchaser, the **"Remainder Amount"** shall be equal to the absolute value of the difference between the Licensee Compensation Amount and the final purchase price actually paid by such Third Party Purchaser.

(b) In the case of a purchase of the Designated Facilities by TDSF or any of its Affiliates, TDSF shall pay an amount equal to the Licensee Compensation Amount to Licensee.

(c) In the case of a purchase of the Designated Facilities by a Third Party Purchaser,

(i) if the final purchase price actually paid by such Third Party Purchaser is equal to the Licensee Compensation Amount, then such Third Party Purchaser shall pay an amount equal to the Licensee Compensation Amount to Licensee; or

(ii) if the final purchase price actually paid by such Third Party Purchaser is greater than the Licensee Compensation Amount, then such Third Party Purchaser shall pay an amount equal to the Licensee Compensation Amount to Licensee and either (a) in the event that the right to purchase the Designated Facilities pursuant to the Purchase Process was triggered by an early termination of this Agreement by TDSF in accordance with the terms of Section 13 of this Agreement or by any proceeding under the Federal Bankruptcy Code or any other applicable bankruptcy Law, an amount equal to the Remainder Amount to TDSF, (b) in the event that the right to purchase the Designated Facilities pursuant to the Purchase Process was triggered by an early termination of this Agreement by Licensee in accordance with the terms of this Agreement (including, without limitation, Section 14), an amount equal to the Remainder Amount to Licensee, or (c) in the event that the right to purchase the Designated Facilities pursuant to the Purchase Process was triggered by an early termination of this Agreement by the mutual agreement of TDSF and Licensee or by the expiration of this Agreement in accordance with its terms, an amount equal to one-half of the Remainder Amount to each of TDSF and Licensee; or

(iii) if the final purchase price actually paid by such Third Party Purchaser is less than the Licensee Compensation Amount, then (I) such Third Party Purchaser shall pay an amount equal to such final purchase price to Licensee and (II) TDSF shall pay an amount equal to the Remainder Amount to Licensee.

(d) At the time of the closing of the purchase of the Designated Facilities, the Licensee Compensation Amount, the Remainder Amount and the amount of the final purchase price actually paid by the Third Party Purchaser (as applicable) shall be, and shall be deemed to be, (i) reduced by the average of the two Facility Appraisal Values for each Designated Facility that ultimately is not Transferred to TDSF, its Affiliates or a Third Party Purchaser, as the case may be, due to closure of the Designated Facility, refusal of the Landlord thereof to consent to such Transfer, a casualty loss to such Designated Facility, the election of TDSF, its Affiliates or such Third Party Purchaser not to include such Designated Facility in the Purchase Process for any reason, or such other factors as may arise prior to the closing of the transaction that may preclude the inclusion of one (1) or more Designated Facilities in the final sale, and/or (ii) increased by the value of any Designated Facility that was added to the Purchase Process but was not included in the original FMV Appraisals, which value shall be calculated as (x) the Net Retail Sales generated by such Designated Facility during the Contract Year most recently completed prior to the Purchase Commencement Date, multiplied by (y) the quotient obtained when (I) the average of the two FMV Appraisals for all of the original Designated Facilities (exclusive of the value of any Overhead Assets and Operations) is divided by (II) the sum of the Net Retail Sales generated by all of the original Designated Facilities during the Contract Year most recently completed prior to the Purchase Commencement Date. In addition, the parties hereto shall, and shall cause the Appraisers and, if applicable, the Third Party Purchaser to, make such other appropriate, good faith adjustments in the FMV Appraisals, the Facility Appraisal Values, the Third Party Offers, the Licensee

Compensation Amount and, if applicable, the Remainder Amount to reflect any other changes in the Designated Facilities or other pertinent portions of the Business that occur prior to the closing.

15.3 Purchase Mechanics. In connection with the purchase of the Designated Facilities by TDSF or any of its Affiliates or a Third Party Purchaser pursuant to this Section 15, Licensee shall, at its sole cost and expense and as expeditiously as practicable, negotiate in good faith and execute and deliver all necessary agreements, instruments and other documentation customary for a transaction of this kind (which may require Licensee to agree to certain representations, warranties, indemnities, break-up fees, transition services and other terms and conditions customary for a transaction of this kind), all of which shall be in a form reasonably acceptable to TDSF and Licensee, and Licensee shall expeditiously take all such additional actions as may be reasonably required in order to consummate the purchase of the Designated Facilities as contemplated hereby. Licensee shall not take any action designed to hinder, delay or render impracticable the purchase of the Designated Facilities in accordance with the terms of this Section 15. In the event that, notwithstanding the exercise of its best efforts, Licensee is unable to reach final agreement with TDSF (or any of its Affiliates) or a Third Party Purchaser selected by TDSF, then TDSF may select another Third Party Purchaser pursuant to Section 15.2.2 to purchase the Designated Facilities, and Licensee shall, at its sole cost and expense, repeat the foregoing process with such alternative Third Party Purchaser. The consummation of any purchase of the Designated Facilities under this Section 15 shall occur concurrently with, or as soon as reasonably practicable following, the expiration of the Term, or, in the case of the earlier termination of this Agreement, Licensee shall use its best efforts to cause the consummation of such purchase as soon as reasonably practicable following the Purchase Commencement Date. Following the consummation of any purchase of the Designated Facilities under this Section 15, Licensee shall provide the purchaser with such support services as may be reasonably required in connection with such purchase, and such purchaser shall bear all actual, reasonable, out-of-pocket costs and expenses relating to such services (including, without limitation, the actual, reasonable out-of-pocket costs and expenses incurred by Licensee relating to such services). Under appropriate circumstances, Licensee may require such purchaser to enter into an interim service agreement with Licensee in connection with such purchase, provided, that the terms of any such agreement (including any financial terms) shall be reasonable and customary for a transaction of the sort contemplated thereby.

16. EFFECT OF EXPIRATION OR TERMINATION OF THIS AGREEMENT.

16.1 Expiration. In the event of the expiration of this Agreement in accordance with its terms, either (i) upon such expiration, if the Purchase Process contemplated by Section 15 was never commenced or was commenced and completed with respect to all of the Facilities concurrently with such expiration, (ii) within three (3) months following such expiration, if the Purchase Process contemplated by Section 15 was commenced and either abandoned prior to such expiration or completed with respect to less than all of the Facilities concurrently with such expiration, or (iii) if the Purchase Process contemplated by Section 15 was commenced but has not been completed or abandoned concurrently with or prior to such expiration, (a) if the Purchase Process is subsequently completed with respect to all of the Facilities, upon the date as of which the Purchase Process is completed, or (b) if the Purchase Process is subsequently abandoned or completed with respect to less than all of the Facilities, within three (3) months following the date of such abandonment or partial completion, Licensee shall, at its sole cost and expense, cease any and all uses of the Licensed Materials, whether in connection with the Disney Merchandise, the FF&E Materials, the Marketing Materials or otherwise, and shall no longer be entitled to use the same in connection with the Facilities, the Internet Store or the Business, except (x) for such materials already in existence and previously distributed to the public, and (y) to the extent that Licensee may have rights to use any Licensed Materials pursuant to any separate agreements with TDSF or any of its Affiliates apart from this Agreement. During any period following the expiration of this Agreement that Licensee may continue to operate the Business and use the Licensed Materials in accordance with the preceding sentence, Licensee shall continue to have the rights hereunder with respect to the use of the Licensed Materials provided in, and shall continue to operate the Business in accordance with, and each of the parties hereto shall continue to be bound by the terms and conditions of, Sections 1 (as applicable), 3 (other than Section 3.2), 4 (other than Section 4.11), 5, 7, 9 (other than Sections 9.9.3 and 9.9.8), 10, 11, 12, 15, 16, 17, 18, 19 and 21.

16.2 Early Termination. In the event of the early termination of this Agreement by either party hereto, Licensee shall continue to have the rights hereunder with respect to the use of the Licensed Materials provided in, and shall continue to operate the Business in accordance with, and each of the parties shall continue to be bound by the terms and conditions of, Sections 1 (as applicable), 3 (other than Section 3.2), 4 (other than Section 4.11), 5, 7, 9 (other than Sections 9.9.3 and 9.9.8), 10, 11, 12, 15, 16, 17, 18, 19 and 21 until (i) if TDSF or any of its Affiliates elects (within the time period specified by Section 15.1.3) to purchase or cause a Third Party Purchaser to purchase all of the Facilities pursuant to Section 15, the date as of which the Purchase Process is completed, (ii) if TDSF or any of its Affiliates elects (within the time period specified by Section 15.1.3) to purchase or cause a Third Party Purchaser to purchase any Designated Facilities pursuant to Section 15 and such Purchase Process is completed but for less than all of the Facilities, or if such Purchase Process is commenced but subsequently abandoned, then the date that is twelve (12) months following such partial completion or such abandonment, or (iii) if TDSF and its Affiliates do not elect (within the time period specified by Section 15.1.3) to purchase or cause a Third Party Purchaser to purchase any Designated Facilities pursuant to Section 15, the date that is twelve (12) months following the date of such termination of this Agreement. Following such time period described in the preceding sentence, Licensee shall, at its sole cost and expense, cease any and all uses of the Licensed Materials, whether in connection with the Disney Merchandise, the FF&E Materials, the Marketing Materials or otherwise, and shall no longer be entitled to use the same in connection with the Facilities, the Internet Store or the Business, except (a) for such materials already in existence and previously distributed to the public, and (b) to the extent that Licensee may have rights to use any Licensed Materials pursuant to any separate agreements with TDSF or any of its Affiliates apart from this Agreement.

16.3 Survival of Certain Provisions. Notwithstanding anything to the contrary contained herein, such rights and obligations of the parties under this Agreement that by their nature are intended to survive the expiration or earlier termination of this Agreement, including, without limitation, Sections 1 (as applicable), 10.2.2, 10.2.3, 11, 12, 16, 17, 18, 19 and 21 (except Sections

21.18 and 21.24), shall survive such expiration or termination of this Agreement either indefinitely or for such shorter period of time as may be set forth in any such section.

16.4 Certain Rights of Licensee Regarding Inventory Liquidation Upon Expiration or Termination. If (a) the Term of this Agreement has been terminated or has expired and has not been renewed pursuant to Section 2.2 and no renewal or negotiation rights continue to exist thereunder, and (b) the Purchase Process contemplated by Section 15 was commenced but abandoned or terminated, or was commenced but was completed with respect to less than all of the Facilities, or was not commenced prior to the expiration of the period during which the Purchase Process could have been commenced pursuant to Section 15 and no Purchase Process can thereafter be commenced under Section 15 at any time in the future in accordance with the terms of Section 15, then, for a period not to exceed three (3) Retail Months prior to the expiration of the Initial Term or any Renewal Term (including for this purpose any additional time periods during which Licensee may continue to operate all or any portion of the Business beyond the expiration or termination of this Agreement pursuant to Section 16) (such 3-Retail-Month period, the "**Liquidation Period**"), Licensee shall have the right to liquidate Disney Merchandise in the Facilities and the Internet Store in accordance with the following: (i) Licensee shall be entitled, at its election, to retain a nationally recognized firm that specializes in inventory liquidation in order to assist Licensee in the liquidation of Disney Merchandise, provided that such firm shall be subject to the written approval of TDSF in its business judgment, (ii) Licensee shall be entitled to provide for a gradual increase in discounts off of the intended retail price of Disney Merchandise during the Liquidation Period in a manner determined by Licensee in its reasonable discretion, (iii) Licensee shall be entitled to consolidate inventories of Disney Merchandise among the Facilities as each Facility is closed, and (iv) Licensee shall be entitled to promote the liquidation and sale of Disney Merchandise at such discount prices solely within the Facilities and the Internet Store through signage indicating that a sale is in progress, provided that (x) all such signage shall be subject to TDSF's written approval in its business judgment, (y) in no event shall Licensee use on such signage any Disney Properties other than the name "Disney Store" in a form, style, manner and size approved by TDSF in its sole discretion, and (z) in no event shall Licensee use any phrases such as "Going Out of Business," "Mass Closing," "Liquidation Sale," "Chain-Wide Sale," "Company-Wide Sale" or any comparable phrases (but Licensee shall be entitled to use the phrase "Store Closing" or comparable phrases). Notwithstanding the foregoing, for purposes of clarification, (1) in no event shall there be any marketing, advertising or promotion of any liquidation sale conducted by Licensee under this Section 16.4 anywhere outside of the Facilities or the Internet Store, including, without limitation, no marketing, advertising or promotion by or through any traditional media, direct mail, billboards or any other form of media or advertisement, (2) all Disney Merchandise sold during the Liquidation Period must be sold only at and through the Facilities and the Internet Store and through no other locations or distribution channels, and (3) except as specifically provided in the preceding subparagraphs (i) through (iv) of this Section 16.4, at all times during the Liquidation Period, Licensee shall continue to comply with all other requirements of this Agreement, including, without limitation, TDSF's sole approval rights contained in Sections 4 and 5 hereof with respect to use of the Disney Properties and the Licensed Materials. Following the Liquidation Period, if Licensee has any remaining inventory of Disney Merchandise, Licensee shall, as soon as reasonably practicable, destroy any and all such Disney Merchandise and furnish to TDSF a certificate from Licensee's Chief Financial Officer (or a senior executive financial officer with knowledge of or responsibility for such matters) certifying as to such destruction. The Liquidation Period and any rights granted to Licensee pursuant to this Section 16.4 shall automatically terminate upon the occurrence of any breach by Licensee of any of the provisions of this Section 16.4.

16.5 Certain Rights of Secured Lender Regarding Inventory Liquidation Upon Event of Default. In connection with any Debt Facility of Licensee and/or its Subsidiaries that was entered into in accordance with Section 9.17.2 and that is secured by (among other things) inventories of Disney Merchandise, if an event of default (as defined in such Debt Facility) has occurred and is continuing after all applicable grace and cure rights and periods provided under such Debt Facility have been exhausted or have expired without an election by Licensee or its Subsidiaries or TDSF or its Affiliates to exercise any of its cure or comparable rights thereunder, then, for a period not to exceed three (3) Retail Months (the "**Lender Liquidation Period**"), the Secured Lender under such Debt Facility shall have the right (by itself or through a nationally recognized liquidation firm as provided in subparagraph (i) below) to liquidate Disney Merchandise subject to such Debt Facility in the Facilities and the Internet Store in accordance with the following: (i) the Secured Lender shall be entitled, at its election, to retain a nationally recognized firm that specializes in inventory liquidation in order to assist the Secured Lender in the liquidation of Disney Merchandise, provided that such firm shall be subject to the written approval of TDSF in its reasonable business judgment, and, to the extent the Secured Lender exercises such right under this subparagraph (i), any action that may be taken by the Secured Lender under this Section 16.5 may be undertaken or performed by such nationally recognized liquidation firm, (ii) the Secured Lender shall be entitled to provide for discounts off of the retail price of Disney Merchandise during the Lender Liquidation Period in a reasonable form and manner as determined by the Secured Lender, (iii) the Secured Lender shall be entitled to consolidate inventories of Disney Merchandise among the Facilities as each Facility is closed and to conduct the closure of Facilities in a manner that is reasonably satisfactory to each of the Secured Lender and TDSF, (iv) the Secured Lender shall be entitled to promote the liquidation and sale of Disney Merchandise at such discount prices solely within the Facilities and the Internet Store through signage indicating that a sale is in progress, provided that (x) all such signage shall be subject to TDSF's written approval in its business judgment, (y) in no event shall the Secured Lender use on such signage any Disney Properties other than the name "Disney Store" in a form, style, manner and size approved by TDSF in its sole discretion, and (z) in no event shall the Secured Lender use any phrases such as "Going Out of Business," "Mass Closing," "Liquidation Sale," "Chain-Wide Sale," "Company-Wide Sale" or any comparable phrases (but the Secured Lender shall be entitled to use the phrase "Store Closing" or comparable phrases), and (v) the Secured Lender (or its nationally recognized liquidation firm) shall be entitled to operate the Facilities hereunder for the sole purpose of conducting the liquidation of Disney Merchandise contemplated by the preceding subparagraphs (i) through (iv). Notwithstanding the foregoing, for purposes of clarification, (1) in no event shall there be any marketing, advertising or promotion of any liquidation sale conducted by the Secured Lender (or its nationally recognized liquidation firm) under this Section 16.5 anywhere outside of the Facilities or the Internet Store, including, without limitation, no marketing, advertising or promotion by or through any traditional media, direct mail, billboards or any other form of media or advertisement, (2) all Disney Merchandise sold during the Lender Liquidation Period must be sold only at and through the Facilities and the Internet Store and through no other locations or distribution channels, (3)

except as specifically provided in the preceding subparagraphs (i) through (v) of this Section 16.5, at all times during the Lender Liquidation Period, the Secured Lender shall comply with the requirements of this Agreement that pertain to the sale of Disney Merchandise and the operation of the Facilities for the sole purpose of selling such Disney Merchandise, but the Secured Lender shall not otherwise be deemed to be the "Licensee" for purposes hereof or otherwise enjoy the rights and privileges of the Licensee hereunder, including, without limitation, Licensee's rights with respect to the creation, development and manufacture of Disney Merchandise, and (4) throughout the Lender Liquidation Period, the Secured Lender shall maintain customary and reasonable policies of insurance to protect against the risks associated with the exercise of its rights hereunder (and each of TDSF and Licensee shall be named as an additional insured under such policies). Following the Lender Liquidation Period, the Secured Lender shall have no further rights to sell any remaining inventory of Disney Merchandise. The Lender Liquidation Period and any rights granted to the Secured Lender pursuant to this Section 16.5 shall automatically terminate upon the occurrence of any breach by the Secured Lender of any of the provisions of this Section 16.5.

17. PUBLIC DISCLOSURE; CONFIDENTIALITY.

17.1 Public Disclosure. Except as required by any applicable Law or any regulation of any securities exchange, securities trading system or similar regulatory body, neither party will make or permit its Affiliates to make any public disclosure or issue any press release or other form of announcement with respect to this Agreement, any of the terms and conditions contained herein, or the negotiations and discussions between the parties without the prior written consent of the other party. Notwithstanding the foregoing, the parties hereto acknowledge that, from time to time during the Term, either party may make certain customary disclosures to the investment community, provided, that unless approved by the other party in its sole discretion, such disclosures are limited to the topic of such party's business objectives for, and the business implications and general structure of, the relationship established by this Agreement, and provided further, that (i) neither party shall disclose any Confidential Information of the other party; and (ii) to the extent practical, the party making such disclosure by way of a prepared statement or other form of written disclosure to the investment community shall, prior to such disclosure, furnish a copy of all portions addressing such topics to the other party and consult with and consider suggestions from the other party with respect to the information to be disclosed and the type of forum in which such disclosure shall take place (except that, prior to the first press release or other form of announcement with respect to this Agreement, no such disclosure to the investment community may be made unless the party making such disclosure shall have received, prior to such disclosure, the written consent of the other party (unless required by any applicable Law or any regulation of any securities exchange, securities trading system or similar regulatory body)). In the event that either party hereto or its Affiliates is required to disclose any of the terms and conditions of this Agreement or Confidential Information pursuant to any applicable Law or any regulation of any securities exchange, securities trading system or similar regulatory body, such party shall use its reasonable efforts to obtain confidential treatment of the same pursuant to the applicable rules regarding obtaining confidential treatment. Such party shall give the other party prior written notice of such occurrence and shall incorporate the other party's reasonable comments into the request for confidential treatment.

17.2 Confidentiality. Without limiting the obligations set forth in Section 17.1, except as otherwise required by any applicable Law or any regulation of any securities exchange, securities trading system or similar regulatory body, Licensee and TDSF agree not to disclose to any third party (other than to their Affiliates and their and their Affiliates' Representatives on a need-to-know basis only) or permit any third party to disclose or use (other than the right of TDSF or Licensee or their Affiliates or their and their Affiliates' respective Representatives to use for purposes of this Agreement) any non-public, confidential or proprietary information (the "**Confidential Information**") that (i) TDSF, its Affiliates or any of its or its Affiliates' Representatives makes available to Licensee, its Affiliates or any of its or its Affiliates' Representatives or (ii) Licensee, its Affiliates or any of its or its Affiliates' Representatives makes available to TDSF, TDSF's Affiliates or any of TDSF's or TDSF's Affiliates' Representatives in connection with this Agreement, including any Confidential Information disclosed by one party to the other party in connection with this Agreement at any time prior to the Effective Date and thereafter throughout the Term. Each of Licensee and TDSF further agrees not to use any such Confidential Information of the other in violation of any applicable securities Laws, including, without limitation, prohibitions thereunder pertaining to trading on material inside information. Such Confidential Information shall include the negotiations leading to this Agreement, the terms and conditions (including economic, legal and other terms) of this Agreement and any agreement referred to herein, information that one party may have caused to deliver to the other party that the delivering party has designated as "Confidential" or "Proprietary" or in like words or information that is generally treated as proprietary (such as financial and operational information and Customer Data), whether or not in written form and whether or not designated as confidential (including, without limitation, systems and software, scripts, plots, storylines, characters and trade secrets of either party hereto). Confidential Information shall not include information that: (i) is or becomes publicly known (other than as a result of a breach of this Agreement or any other legal duty by the receiving party, its Affiliates or its or its Affiliates' Representatives), (ii) is lawfully received by the receiving party from a third party on a non-confidential basis, which third party is not to the knowledge of the receiving party bound in a confidential relationship with the disclosing party, or (iii) is generated independently by or for the receiving party without the use of Confidential Information of the disclosing party. Notwithstanding anything to the contrary contained herein, the Confidential Information of Licensee and its Affiliates shall not include any ideas, suggestions or concepts (except for any matters that may be subject to prior patent or trademark protection or as may be otherwise expressly provided for in this Agreement or any agreement executed at the time such information is exchanged) that may be conceived or developed during or as a result of any discussions, meetings or communications between the parties hereto (or their respective Affiliates or Representatives) during the Term (collectively, "**Ideas**"), and TDSF and its Affiliates shall be free to use and exploit any such Ideas in any manner and for any purpose and in their respective sole discretion, all without any restriction or any obligation, liability or compensation to Licensee or its Affiliates. If a receiving party, its Affiliates or its or its Affiliates' Representatives are requested or required to disclose any of the Confidential Information of a disclosing party in an investigatory, legal, regulatory or administrative proceeding, such receiving party will, to the extent possible, provide the disclosing party with prompt notice thereof and, except in the case of a Tax proceeding, the disclosing party may seek a protective order or other appropriate remedy. If no such order or remedy is obtained, then the receiving party may, without liability hereunder, disclose in

such proceeding that portion of the Confidential Information of the disclosing party that the receiving party's legal counsel has advised the receiving party it is legally required to disclose. Each of the parties hereto agrees that it shall be responsible for any disclosure of Confidential Information by its Affiliates and its and its Affiliates' Representatives that would constitute a breach of this Section 17.2.

17.3 Survival of Section. The provisions of Sections 17.1 and 17.2 and the obligations of the parties thereunder shall survive the expiration or earlier termination of this Agreement for a period of three (3) years thereafter.

18. REPRESENTATIONS, WARRANTIES AND COVENANTS OF LICENSEE.

Each of TDS USA and TDS Canada, jointly and severally, represents and warrants to, and covenants with, TDSF (subject to the proviso immediately following Section 12.1.10) as follows:

18.1 Organization, Standing and Authority; Capitalization. Prior to the TDS USA Merger, TDS USA is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California and, following the TDS USA Merger, TDS USA will be a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. TDS Canada is a corporation duly incorporated, validly existing and in good standing under the laws of the Province of Ontario. Each of TDS USA and TDS Canada has the requisite power and authority to (i) execute and deliver this Agreement and the documents and instruments contemplated hereby, (ii) perform and comply with all of the terms, conditions and covenants to be performed and complied with by it hereunder and thereunder, and (iii) own its properties and assets and carry on its business as currently conducted. On the Effective Date, (a) all Outstanding TDS USA Securities and all Outstanding TDS Canada Securities are solely owned by Licensee Parent and Canadian Parent, respectively, (b) all outstanding Licensee Parent Securities are solely owned by TCP, (c) all outstanding Canadian Parent Securities are solely owned by TDS USA, and (d) none of Licensee, Licensee Parent or Canadian Parent has any Subsidiaries nor any other debt or equity investments in any other Person (other than Licensee Parent's ownership of TDS USA Securities and Canadian Parent's ownership of TDS Canada Securities). On the Effective Date, Licensee engages in no other business or operation than the Business, and Licensee Parent and Canadian Parent engage in no other business than holding all Outstanding TDS USA Securities and all Outstanding TDS Canada Securities, respectively. Prior to or on the Effective Date, Licensee has delivered to TDSF a true and complete copy of Licensee's, Licensee Parent's and Canadian Parent's Governing Documents, all of which remain in full force and effect without amendment or modification; and

18.2 Authorization and Binding Obligation. All necessary action on Licensee's part has been duly and validly taken to authorize the execution, delivery and performance of this Agreement and such other agreements and instruments to be executed and delivered by Licensee in connection herewith. This Agreement has been duly executed and delivered by Licensee and constitutes its legal, valid and binding obligation enforceable against Licensee in accordance with the terms hereof; and

18.3 Absence of Conflicting Agreements. No consent, authorization, approval, order, license, certificate or permit of or from, or declaration or filing with, any Governmental Entity is required for Licensee's execution, delivery and performance of this Agreement or any of the agreements or instruments contemplated hereby. Neither the execution, delivery and performance by Licensee of this Agreement or such other agreements and instruments nor the consummation of the transactions contemplated hereby or thereby will: (i) violate any provision of Licensee's Governing Documents; (ii) violate any Law to which Licensee is subject that would have a material adverse effect on Licensee's ability to perform its obligations hereunder; (iii) violate any material Contract to which Licensee is a party or is subject, or (iv) result in the imposition of any material Encumbrance against Licensee or any of its properties; and

18.4 Claims; Legal Actions. Other than as set forth in the "TDS Schedules" delivered pursuant to the Acquisition Agreement, there is no Action pending or, to the knowledge of Licensee, threatened against or affecting Licensee or its Affiliates or any of its or their properties or assets that has or might reasonably be expected to have a material adverse effect on Licensee's ability to perform its obligations under this Agreement or the transactions contemplated by this Agreement; and

18.5 Full Disclosure. No representation or warranty made by Licensee in this Agreement or in any certificate, document or other instrument furnished or to be furnished pursuant hereto contains or will contain any untrue statement of a material fact nor shall any such representation or warranty omit any material fact necessary in order to make any statement contained herein or therein not misleading; and

18.6 No Reliance. Licensee acknowledges and agrees that, except as expressly set forth herein, TDSF has not made, and Licensee is not relying on, any representation or warranty, express or implied, with respect to the subject matter hereof; and

18.7 No Broker Fees. No agent, broker, finder, investment or commercial banker, or other Person or firm engaged by or acting on behalf of Licensee or any of its Affiliates in connection with the negotiation, execution or performance of this Agreement or the transactions contemplated by this Agreement is or will be entitled to any broker's or finder's or similar fees or other commission as a result of this Agreement or such transactions, except for any fee that may become payable to Peter J. Solomon, for which Licensee shall have sole responsibility; and

18.8 Survival. The representations and warranties contained in this Section 18 shall survive the execution and delivery of this Agreement indefinitely.

19. REPRESENTATIONS, WARRANTIES AND COVENANTS OF TDSF.

TDSF represents and warrants to, and covenants with, Licensee (subject to the proviso immediately following Section 12.2.6) as follows:

19.1 Organization, Standing and Authority; Rights in Disney Properties. TDSF is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California. TDSF has the requisite power and authority to (i) execute and deliver this Agreement and the documents and instruments contemplated hereby, (ii) perform and comply with all of the terms, conditions and covenants to be performed and complied with by it hereunder and thereunder, and (iii) own its properties and assets and carry on its business as currently conducted. Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida. Guarantor has the requisite power and authority to (i) execute and deliver the Disney Guarantee and the documents and instruments contemplated thereby, (ii) perform and comply with all of the terms, conditions and covenants to be performed and complied with by it thereunder, and (iii) own its properties and assets and carry on its business as currently conducted. TDSF has, and throughout the Term shall have, pursuant to one (1) or more intercompany license agreements with any of its Affiliates, sufficient rights in and to the name "Disney" and the Disney Properties to perform and comply with all of its obligations hereunder, subject to the terms and conditions hereof, and in the event that, during the Term, any licensor under any such intercompany license agreement transfers the name "Disney" together with all or a substantial portion of the Disney-Branded Properties to another Person, TDSF shall cause such licensor to require, as a condition to such transfer, that such Person confirm such intercompany license agreement and the terms and conditions thereof or enter into a replacement license agreement (or comparable instrument) with TDSF or its Affiliates (as determined by TDSF in its sole discretion) pursuant to which TDSF shall continue to have, throughout the Term, sufficient rights in and to the name "Disney" and the Disney-Branded Properties to perform and comply with all of its obligations hereunder, subject to the terms and conditions hereof; and

19.2 Authorization and Binding Obligation. All necessary action on the part of each of TDSF and Guarantor has been duly and validly taken to authorize the execution, delivery and performance of this Agreement, the Disney Guarantee and such other agreements and instruments to be executed and delivered by them in connection herewith. This Agreement and the Disney Guarantee have been duly executed and delivered by TDSF and Guarantor, respectively, and constitute the legal, valid and binding obligations of TDSF and Guarantor, respectively, enforceable against TDSF and Guarantor, respectively, in accordance with the terms hereof and thereof; and

19.3 Absence of Conflicting Agreements. No consent, authorization, approval, order, license, certificate or permit of or from, or declaration or filing with, any Governmental Entity is required for the execution, delivery and performance by TDSF or Guarantor, as applicable, of this Agreement, the Disney Guarantee or any of the agreements or instruments contemplated hereby or thereby. Neither the execution, delivery and performance by TDSF or Guarantor, as applicable, of this Agreement, the Disney Guarantee or such other agreements and instruments nor the consummation of the transactions contemplated hereby or thereby will: (i) violate any provision of TDSF's or Guarantor's Governing Documents; (ii) violate any Law to which TDSF or Guarantor is subject that would have a material adverse effect on TDSF's or Guarantor's ability to perform its obligations hereunder or under the Disney Guarantee; (iii) violate any material Contract to which TDSF or Guarantor is a party or is subject, or (iv) result in the imposition of any material Encumbrance against TDSF or Guarantor or any of their respective properties; and

19.4 Claims; Legal Actions. There is no Action pending or, to the knowledge of TDSF, threatened against or affecting TDSF or its Affiliates or any of its or their properties or assets that has or might reasonably be expected to have a material adverse effect on the respective abilities of TDSF or Guarantor to perform their respective obligations under this Agreement or the Disney Guarantee, as applicable, or the transactions contemplated hereby or thereby; and

19.5 Full Disclosure. No representation or warranty made by TDSF or Guarantor in this Agreement or in any certificate, document or other instrument furnished or to be furnished pursuant hereto contains or will contain any untrue statement of a material fact nor shall any such representation or warranty omit any material fact necessary in order to make any statement contained herein or therein not misleading; and

19.6 No Reliance. TDSF acknowledges and agrees that, except as expressly set forth herein, Licensee has not made, and TDSF and Guarantor are not relying on, any representation or warranty, express or implied, with respect to the subject matter hereof; and

19.7 No Broker Fees. No agent, broker, finder, investment or commercial banker, or other Person or firm engaged by or acting on behalf of TDSF or any of its Affiliates in connection with the negotiation, execution or performance of this Agreement, the Disney Guarantee or the transactions contemplated hereby or thereby is or will be entitled to any broker's or finder's or similar fees or other commission as a result of this Agreement or such transactions, except for any fee that may become payable to Bear Stearns and Goldman Sachs, for which TDSF and/or its Affiliates shall have sole responsibility; and

19.8 Survival. The representations and warranties contained in this Section 19 shall survive the execution and delivery of this Agreement indefinitely.

20. COMPLIMENTARY BENEFITS.

During each full calendar year during the Term, TDSF or its Affiliates shall, at their sole cost and expense, provide Licensee with the following complimentary benefits (provided, that Licensee acknowledges and agrees that all such complimentary benefits provided by TDSF or its Affiliates under this Section 20 (i) may not be sold by Licensee, (ii) shall contain an expiration date of December 31 of the calendar year in which they are issued, and (iii) shall remain subject to TDSF and its Affiliates' standard policies and practices, as may be amended and supplemented by TDSF and its Affiliates from time to time during the Term, applicable to Persons to whom complimentary or reduced rate admission tickets or related benefits are issued):

20.1 An aggregate of fifty (50) complimentary one-day, one-park passes for admission to either WALT DISNEY WORLD Resort's MAGIC KINGDOM® Park, EPCOT®, Disney-MGM Studios, DISNEY'S ANIMAL KINGDOM® Theme Park, Disney's Blizzard Beach Water Park, Disney's River Country Water Park or Disney's Typhoon Lagoon Water Park, as Licensee may so elect (provided, that, with respect to the foregoing three (3) water parks, the number of one-day passes shall be limited to twenty-five (25) per calendar year);

20.2 An aggregate of fifty (50) complimentary one-day park passes for admission to either DISNEYLAND® Park or DISNEY'S CALIFORNIA ADVENTURE™ Theme Park at DISNEYLAND Resort, as Licensee may so elect;

20.3 "Silver Passes" for (i) each Licensee Employee who is an assistant Facility manager, a Facility manager, a district manager, a regional manager or a full-time director level or above employee located at the corporate headquarters who is solely dedicated to the Business, and (ii) a limited number of select senior executive officers of Licensee or its Affiliates whose primary responsibilities are managing and/or supervising the relationship established hereby as determined from time to time during the Term by TDSF in its sole discretion (collectively, "**Silver Pass Holders**"). Each Silver Pass will be separately issued in the name of the respective Silver Pass Holder but will not identify the holder thereof as an employee of TDSF or its Affiliates. Silver Passes may be subject to black-out periods or other comparable restrictions generally applicable to complimentary passes. Silver Passes shall be promptly returned to TDSF upon the date of expiration or earlier termination of this Agreement. In addition, Licensee agrees to promptly notify TDSF of any changes in either the employment status of any Silver Pass Holder or the responsibilities (i.e., responsibilities relating to the Business) of any Silver Pass Holder, and, at TDSF's request, Licensee shall promptly return to TDSF the Silver Pass with respect to any Silver Pass Holder who TDSF, in its sole discretion, determines should no longer be entitled to hold a Silver Pass; and

20.4 A complimentary membership for one individual designated by Licensee and reasonably acceptable to TDSF to "Club 33," which is a private club (i.e., not open to the general public, but available for use by select corporate sponsors and for TWDC executives for business purposes) located within DISNEYLAND® Park at DISNEYLAND Resort, provided, that such membership (i) shall be subject to the execution and delivery to TDSF of the then-current form of membership agreement for Club 33 and (ii) shall not be effective at any time other than the Term. In connection with Licensee's use of Club 33, Licensee shall be responsible for all charges and costs (other than the annual membership fee) associated with the use of Club 33 (e.g., food and beverage costs).

21. MISCELLANEOUS.

21.1 Books and Records.

21.1.1 Right of Audit. During the Term, Licensee and its Affiliates shall at all times keep and maintain, in accordance with GAAP, accurate, complete and up-to-date books and records pertaining to all operations of the Business and Licensee's rights and obligations under this Agreement. TDSF shall have, no more than twice during each Contract Year (which, in the first (1st) Contract Year, will include the Stub Period) (unless TDSF has credible indications of non-compliance with this Agreement by Licensee, in which event a more frequent audit shall be permitted) and during normal business hours and upon at least five (5) Business Days' prior written notice to Licensee, the right to, or the right to have its Affiliates or its or its Affiliates' Representatives, conduct an audit (in accordance with the terms of this Section 21.1) of all such books and records for the sole purpose of verifying, and solely to the extent necessary to verify, compliance with the provisions of this Agreement. Licensee shall cooperate and cause its Affiliates to cooperate in all respects with TDSF, its Affiliates and/or its or its Affiliates' Representatives in connection with such audits, including, without limitation, making available the management and employees of Licensee and representatives of Licensee's outside auditors to assist and answer questions relating thereto. The costs and expenses associated with any such audits shall be borne entirely by TDSF, except as provided in Section 21.1.2. Such audit rights contained herein may be exercised at any time up to five (5) years following the end of the Contract Year to which such books and records relate, and Licensee and its Affiliates shall maintain such books and records for at least such period of time, and, if any dispute between the parties hereto with respect to this Agreement has arisen and remains unresolved at the expiration of such period of time, for such reasonable period of time thereafter during the attempted resolution of such dispute.

21.1.2 Underpayment or Overpayment Remedies. If, upon any such audit of books and records conducted in accordance with the terms of Section 21.1.1, one (1) or more errors shall be revealed, all related calculations prior to the date on which such discovery is made may be reviewed, and the amount of any overpayment or underpayment of amounts due to either party pursuant to the terms of this Agreement that may be disclosed by such review, together with interest accrued thereon from the date on which such underpayment or overpayment was made until the amount thereof is paid or credited at the per annum interest rate set forth in Section 21.20, shall be paid and/or adjusted between the parties hereto. If an error by Licensee results in there being due to TDSF an amount equal to one percent (1%) or more of the Licensee Payments due to TDSF with respect to any Contract Year, then the reasonable costs of examination, copying and/or auditing that revealed such errors shall also be paid by Licensee.

21.2 Insurance. At all times during the Term and for a period of eighteen (18) months thereafter, Licensee shall maintain, at its own cost and expense, a comprehensive program of insurance to adequately protect the respective interests (including indemnification rights) of the parties hereunder, including, without limitation, the following insurance coverage with carriers and on forms that are reasonably acceptable to TDSF in each case (subject to the other provisions of this Section 21.2):

(i) a policy or policies of commercial general liability insurance (including, without limitation, contractual liability, products/completed operations liability and cross-liability) with minimum limits of One Million Dollars ($1,000,000) per occurrence and maximum deductibles of Two Hundred Fifty Thousand Dollars ($250,000) per occurrence covering bodily injury

(including death resulting therefrom), personal injury and/or property damage that may arise from or in connection with Licensee's performance of or failure to perform its obligations under this Agreement; and

(ii) a policy or policies of workers' compensation insurance as required by applicable Law and employer's liability insurance with minimum limits of One Million Dollars ($1,000,000) per occurrence and maximum deductibles of Two Hundred Fifty Thousand Dollars ($250,000) per occurrence with respect to any employee, agent, subcontractor or other Representative of Licensee or its Affiliates performing services in connection with the Business or this Agreement; and

(iii) a policy or policies of directors' and officers' insurance with minimum limits of Ten Million Dollars ($10,000,000) per occurrence and maximum deductibles of One Million Dollars ($1,000,000) per occurrence covering both the Board Observers and the Independent Directors contemplated by Section 9.13; and

(iv) a policy or policies of excess liability covering General Liability, Products/Completed Operations Liability, Auto Liability, and Employers Liability with minimum limits of One Hundred Million Dollars ($100,000,000) per occurrence and in the aggregate. If Seventy Five Million Dollars ($75,000,000) of this aggregate is eroded, Licensee shall advise TDSF of this erosion immediately.

All insurance required hereby shall be placed with a carrier possessing an A-VII rating or better as listed in the Best Guide and, except in the case of workers' compensation insurance required pursuant to subparagraph (iii) of this Section 21.2, shall provide that no cancellation, reduction or non-renewal of coverage thereunder may occur except upon at least twenty (20) Business Days' prior written notice to TDSF. With respect to all insurance policies required hereunder or otherwise held by Licensee (other than policies for workers' compensation insurance required pursuant to subparagraph (iii) of this Section 21.2), Licensee shall, within two (2) months after the Effective Date, provide to TDSF certificates of insurance (or copies of policies, if required by TDSF) (a) naming TDSF and its Affiliates, and the officers, directors, agents and employees of each, as additional insureds and (b) containing a waiver of subrogation with respect to such additional insureds (which waiver of subrogation will apply to all insurance policies, including policies for worker's compensation insurance). TDSF's or its Affiliates' failure to request, review or object to the terms of such certificates of insurance or insurance policies shall not be deemed a waiver of Licensee's obligations or the rights of TDSF or its Affiliates hereunder. In the event Licensee fails to obtain all insurance required hereby within two (2) months after the Effective Date, TDSF shall have the right to terminate this Agreement upon twenty (20) Business Days' prior written notice to Licensee. All insurance required hereby shall be primary and non-contributory should other insurance be available to TDSF and its Affiliates and the officers, directors, agents and employees of each. The minimum limits of the insurance required in this Section 21.2 shall in no way limit or diminish Licensee's liability under any other provisions of this Agreement.

21.3 Force Majeure. If the performance by either party hereto of its respective nonmonetary obligations under this Agreement is delayed in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes or other labor difficulties, or any Law or action adopted or taken by any Governmental Entity, or any other cause not reasonably within such party's control, whether or not specifically mentioned herein, such party shall be excused, discharged and released of performance to the extent such performance or obligation is so delayed by such occurrence without liability of any kind. Nothing contained herein shall be construed as requiring either party hereto to accede to any demands of, or to settle any disputes with, labor or labor unions, suppliers or other parties that such party considers unreasonable. The party subject to such a delay as contemplated herein shall, within five (5) Business Days following the occurrence of any event of "Force Majeure" as described hereunder, notify the other party hereto of such event and the probable duration thereof. Notwithstanding the foregoing, if either party is subject to an event of "Force Majeure" that persists for six (6) months or more and that materially diminishes any rights of the other party hereunder, then such other party shall be entitled to terminate this Agreement upon twenty (20) Business Days' prior written notice to the party subject to the event of "Force Majeure."

21.4 Waivers. No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by a duly authorized officer of each of the parties hereto. Neither the failure to insist, nor any delay in insisting, upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions, and no waiver of any rights or remedies that either party hereto may have in one instance shall be deemed to constitute a waiver of such rights or remedies in any other instance.

21.5 Notices. Unless otherwise specified herein, all notices, requests, demands, consents and other communications hereunder, including, without limitation, submissions by Licensee pursuant to Section 5 or Section 9.19, shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, or upon delivery when sent by express mail, courier or other recognized overnight mail or next day delivery service, charges prepaid, or three (3) Business Days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited with a public telegraph company for immediate transmittal, charges prepaid, or when sent by facsimile, with a confirmation copy sent by recognized overnight mail or next day delivery, charges prepaid, addressed as follows (or, in the case of submissions by Licensee pursuant to Section 5 or Section 9.19, addressed to the individual designated by TDSF):

If to Licensee:

The Disney Store, LLC
The Disney Store (Canada) Ltd.
c/o The Children's Place Retail Stores, Inc.
915 Secaucus Road
Secaucus, New Jersey 08540

| | |
|---|---|
| | Facsimile: (201) 558-2837<br>Attention: Chief Financial Officer |
| With a copy to:<br>(which shall not<br>constitute notice) | The Disney Store, LLC<br>The Disney Store (Canada) Ltd.<br>c/o The Children's Place Retail Stores, Inc.<br>915 Secaucus Road<br>Secaucus, New Jersey 08540<br>Facsimile: (201) 558-2825<br>Attention: General Counsel |
| With a copy to:<br>(which shall not<br>constitute notice) | Stroock & Stroock & Lavan LLP<br>180 Maiden Lane<br>New York, New York 10038<br>Facsimile: (212) 806-6006<br>Attention: Jeffrey S. Lowenthal, Esq. |
| If to TDSF: | TDS Franchising, LLC<br>c/o The Walt Disney Company<br>500 South Buena Vista Street (MC: 6916)<br>Burbank, California 91521-6916<br>Attn.: Anne Gates, EVP and CFO<br>Facsimile: (818) 559-6215 |
| With a copy to:<br>(which shall not<br>constitute notice) | The Walt Disney Company<br>500 South Buena Vista Street<br>Burbank, California 91521-0930<br>Attn.: General Counsel<br>Facsimile: (818) 238-0404 |
| With a copy to:<br>(which shall not<br>constitute notice) | The Walt Disney Company<br>500 South Buena Vista Street<br>Burbank, California 91521-0930<br>Attn.: James Kapenstein, Esq.<br>Facsimile: (818) 562-1813 |

or such other address or facsimile number as may be designated by either party hereto by written notice to the other in accordance with this Section 21.5.

21.6 Entire Agreement. The provisions contained in this Agreement (including the Disney Guarantee and the Schedules), the Acquisition Agreement, the TCP Guaranty and Commitment and/or any other documents, agreements and instruments contemplated hereby or thereby or to be executed and delivered in connection herewith or therewith or pursuant hereto or thereto constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede and replace any and all previous agreements between the parties, whether written or oral with respect to such subject matter. No statement or inducement with respect to the subject matter hereof by any party hereto or by any agent or representative of any party hereto that is not contained in this Agreement (including the Disney Guarantee and the Schedules), the Acquisition Agreement, the TCP Guaranty and Commitment and/or any other documents, agreements and instruments contemplated hereby or thereby or to be executed and delivered in connection herewith or therewith or pursuant hereto or thereto shall be valid or binding between the parties.

21.7 Joint Venture/Partnership Disclaimer. The parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, fiduciary, employment or agency relationship for purposes of this Agreement, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein or in any other document executed or delivered or to be executed or delivered, nothing herein shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, fiduciary, employment or agency relationship of any kind or nature whatsoever between the parties hereto.

21.8 Accord and Satisfaction. Payment by any party hereto, or receipt or acceptance by a receiving party, of any payment due hereunder in an amount less than the amount required to be paid hereunder shall not be deemed an accord and satisfaction or a waiver by the receiving party of its right to receive and recover the full amount of such payment due hereunder, notwithstanding any statement to the contrary on any check or payment or on any letter accompanying such check or payment. The receiving party may accept such check or payment without prejudice to the receiving party’s right to recover the balance of such payment due hereunder or to pursue any other legal or equitable remedy provided in this Agreement.

21.9 Relationship of Parties. Except as may be specifically provided under any provision of this Agreement, nothing contained in this Agreement shall (i) authorize, empower or constitute any party as agent of any other party in any manner, (ii) authorize or empower one party to assume or create an obligation or responsibility whatsoever, express or implied, on behalf of

or in the name of any other party; or (iii) authorize or empower a party to bind any other party in any manner, make any representation, warranty, covenant, agreement or commitment on behalf of any other party, or permit a party to hold itself out as having the authority to do any of the foregoing.

21.10 Effect of Headings. The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants or conditions of this Agreement in any manner.

21.11 Construction. This Agreement has been fully reviewed and negotiated by the parties hereto and their respective counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted and prior drafts of this Agreement shall be disregarded and inadmissible as proof or indication of the intent of the parties or for any other purpose in the event of any other controversy regarding the meaning, construction or interpretation of this Agreement.

21.12 Non-Assignment by Licensee. Licensee shall not Transfer, in any manner whatsoever, voluntarily or involuntarily or by operation of Law, this Agreement or any interest or benefit of Licensee contained herein (including, without limitation, Licensee's rights and duties of performance), except that Licensee may Transfer this Agreement in connection with a Transfer of all or substantially all of Licensee's properties and assets to a Person who is a Qualified Person, provided, that TDSF shall have obtained a Guaranty Assumption and a License Assumption in connection with such Transfer. There shall be no limitation, prohibition or restriction on the right of TDSF to Transfer, in any manner whatsoever, this Agreement or any interest or benefit of TDSF contained herein (including, without limitation, TDSF's rights and duties of performance); provided, that (i) the Disney Guarantee shall remain in effect after any such Transfer and (ii) the Person to which TDSF Transfers this Agreement (or any interest or benefit of TDSF contained herein) shall have the ability to perform TDSF's duties and obligations hereunder.

21.13 Severability. If any term or provision of this Agreement shall be found to be void or contrary to any applicable Law, such term or provision shall be deemed to be severable from the other terms and provisions hereof, but only to the extent necessary to bring this Agreement within the requirements of such Law, and the remainder of this Agreement shall be given effect as if the parties hereto had not included the severed term herein; provided, that, if the party that would be adversely affected by such severance demonstrates that a material inducement to its entering into this Agreement would be materially impaired, such party shall be entitled to seek to terminate this Agreement on that ground.

21.14 Amendments. No provision of this Agreement may be modified, supplemented or amended except by a written instrument duly executed by each of the parties hereto. Any such modifications, supplements or amendments shall not require additional consideration to be effective.

21.15 Counterparts; Facsimile Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures to this Agreement shall be effective.

21.16 Schedules. The Schedules to this Agreement, as designated herein and delivered concurrently with the execution hereof by TDSF to Licensee, shall each be deemed to form an integral part of this Agreement and to be incorporated herein as if herein set out in full. Capitalized terms used in the Schedules and not otherwise defined in the Schedules shall have the respective meanings ascribed to them in this Agreement.

21.17 No Third Party Beneficiaries. Nothing in this Agreement is intended, or shall be deemed to, confer any rights or benefits upon any Person other than the parties hereto or to make or render any such other Person a third-party beneficiary of this Agreement, except to the extent that an Affiliate of either party or any officers, directors, agents, representatives, employees, successors or assigns of a party or any of its Affiliates have any rights (including a right to be indemnified pursuant to Section 12) under this Agreement.

21.18 Further Assurances. Each party hereto shall, upon request by the other party, execute any and all further documents or instruments and take such additional actions as the other party may deem reasonably necessary to carry out the proper purposes of this Agreement.

21.19 Conflicts of Interest. Each of the parties hereto shall exercise reasonable care and diligence to prevent their respective employees and agents from making, receiving, providing or offering substantial gifts, entertainment, payments, loans or other consideration for the purpose of influencing the other party's employees or any vendors, contractors or other parties to act to the detriment of such other party.

21.20 Interest. All arrearages in the payment of any sums due to either party hereto under the provisions of this Agreement shall bear interest from the due date until paid at the lesser of the (i) per annum amount that is equal to two percent (2%) plus the Prime Rate and (ii) the highest rate of interest then allowable pursuant to applicable Law.

21.21 Governing Law; Remedies.

21.21.1 Except to the extent governed by the United States Copyright Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) or other federal law of the United States, this Agreement shall be deemed to have been entered into in the State of California and shall be interpreted and construed in accordance with the laws of the State of

California applicable to agreements executed and to be performed therein by each party hereto. Under no circumstances shall any laws enacting the United Nations Convention on Contracts for International Sale of Goods apply to this Agreement.

21.21.2 Each party hereby acknowledges and agrees that: (i) in the event of any breach or prospective breach of this Agreement by TDSF, Licensee's remedy shall be limited solely to monetary damages (if and to the extent available), and Licensee hereby waives any and all rights it may have to any form of equitable relief, including, without limitation, any temporary restraining order, preliminary injunction, permanent injunction, specific performance or any other form of relief in equity; provided, that this Section 21.21.2 shall not prohibit Licensee from obtaining such equitable relief (if such relief is otherwise available and Licensee is able to satisfy the requirements necessary to obtain such relief) against TDSF and/or its Affiliates (but not against any third party licensee of TDSF or any of its Affiliates) in the case of (a) TDSF's breach of Section 17 or (b) TDSF's Uncured Material Breach of subparagraph (A) of Section 6.1; and (ii) in the event of any breach or prospective breach of this Agreement by Licensee (including, without limitation, any Licensee Infringing Use), TDSF's remedy shall include, without limitation, monetary damages (if and to the extent available), any form of equitable relief, including, without limitation, any temporary restraining order, preliminary injunction, permanent injunction, specific performance or any other form of relief in equity (if such relief is available and TDSF is able to satisfy the requirements necessary to obtain such relief), and any other right or remedy available to TDSF as a result of such breach under this Agreement, at law, in equity or otherwise. In the case of any action for equitable relief by either party hereto that is permitted pursuant to the preceding sentence (each, an "**Equitable Action**"), the parties acknowledge and agree that money damages may not be an adequate remedy and that, in such action, the non-breaching party may, in its sole discretion, apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, a permanent injunction, specific performance or other form of equitable relief (without the posting of any bond or other security) as such court may deem just and proper in order to enforce the applicable provision of this Agreement or prevent any violation thereof and, to the extent permitted under applicable Law, each party hereto waives any objection to the imposition of such relief in any such Equitable Action. Any such equitable relief granted in an Equitable Action shall not be exclusive and any party seeking such relief shall also be entitled to seek and enforce any other right or remedy available to it, including money damages.

21.21.3 In any Equitable Action, the non-breaching party shall be entitled, in its sole discretion, to seek recourse and remedy through either (i) the dispute resolution procedures set forth in Section 21.23 or (ii) a legal proceeding submitted for trial before the Superior Court in and for the County of Los Angeles, State of California, or the United States District Court for the Central District of California, or if neither such court shall have jurisdiction, then before any other court sitting in Los Angeles County, California, having subject matter jurisdiction. The parties hereto consent to the exclusive jurisdiction of such courts in connection with any Equitable Action and to service of process outside of the State of California pursuant to the requirement of any such court in any matter subject to it. With respect to any dispute arising under this Agreement other than an Equitable Action, the parties hereto agree that all such disputes shall be resolved through the dispute resolution procedures set forth in Section 21.23; provided, that, if TDSF shall bring any Equitable Action in any court pursuant to subparagraph (ii) of this Section 21.21.3, it shall be entitled to seek any other remedy in addition to equitable relief, including money damages, to the extent permitted hereby in the same court proceeding and shall not be required to submit such matter to dispute resolution under Section 21.23.

21.21.4 The provisions of this Section 21.21 shall survive the expiration or earlier termination of this Agreement indefinitely.

21.22 Limitation of Liability. Notwithstanding anything contained herein to the contrary, except (i) for any Loss paid to third parties for which either party hereto is obligated to indemnify the other party pursuant to Section 12 and (ii) in the case of a willful or grossly negligent Licensee Infringing Use or any other willful or grossly negligent misuse by Licensee or its Affiliates of any name, brand, trademark, logo, symbol, character or other proprietary designation or intellectual property of TDSF or any of its Affiliates, neither party shall be liable under this Agreement to the other party for any punitive, exemplary, consequential, incidental, indirect, special or speculative damages (including loss of profits) based upon breach of warranty, breach of contract, negligence, strict liability and tort, or any other legal theory. With respect to the matters specified in the preceding subparagraphs (i) and (ii), no such limitation on damages shall apply.

21.23 Arbitration Procedures.

21.23.1 Management Negotiations. Except as otherwise provided in Section 21.21, in the event of any controversy, dispute or claim between TDSF or any of its Affiliates, on the one hand, and Licensee or any of its Affiliates, on the other hand, arising out of or relating to this Agreement or any provisions hereof or the validity of this Agreement, the parties hereto agree that, prior to submitting such controversy, dispute or claim to the arbitration proceedings described below in this Section 21.23, it shall be submitted to the President of TWDC and the Chief Executive Officer of Licensee (or, if no person holds either such title, a senior executive officer of such entity performing a similar function), who shall negotiate in good faith with one another for a period of not less than five (5) Business Days in an effort to resolve such controversy, dispute or claim. Notwithstanding the foregoing, in the case of any Licensee Infringing Use or any other misuse by Licensee or its Affiliates of any name, brand, trademark, logo, symbol or other proprietary designation or intellectual property of TDSF or its Affiliates, TDSF may elect, in its sole discretion, to forego the procedure required by this Section 21.23.1 and proceed directly to arbitration under Section 21.23.2.

21.23.2 Arbitrable Disputes. Except as otherwise provided in Section 21.21, all controversies, disputes and claims between TDSF and/or its Affiliates, on the one hand, and Licensee and/or its Affiliates, on the other hand, arising out of or relating to this Agreement or any provision hereof or the validity of this Agreement that have not been resolved through the procedure set forth in Section 21.23.1 (collectively, "**Arbitrable Disputes**") must be resolved through binding arbitration administered by ADR Services (the "**Arbitration Administrator**") in accordance with the terms of this Section 21.23, or such other entity agreed upon

by the parties hereto to administer the arbitration of an Arbitrable Dispute. Except as otherwise set forth in this Section 21.23, the U.S. Arbitration Act shall govern the interpretation and enforcement of, and proceedings pursuant to, the provisions of this Section 21.23.

21.23.3 Applicability of California Procedural Law. Unless otherwise stipulated in writing or on the record before the Arbitrator or the Appellate Arbitrators, in either case by all of the parties involved in an Arbitrable Dispute (the "**Arbitration Parties**") or affected by the stipulation, all Arbitrable Disputes will be governed by California procedural law, including, but not limited to, the procedures set forth in the California Code of Civil Procedure, the California Civil Code, the California Evidence Code, and the California Rules of Court (but not including any local rules), except to the extent such procedures are inconsistent with the express terms of this Section 21.23. It is the intent of the Parties that all pleadings, discovery, motion practice, trial and appeal (including, but not limited to, the format, scope, and substance of, and time requirements applicable to, any filings) proceed as if the Arbitrable Dispute had been brought in the Superior Court of the State of California, except: (i) the Arbitrator and Appellate Arbitrators will be appointed in accordance with Section 21.23.5; (ii) the Arbitrator will serve as the finder of fact (and the parties waive any right to a jury); (iii) there will be no interlocutory appellate (e.g., writ) relief available; (iv) discovery will be limited to matters that are directly relevant to the issues in the arbitration unless, upon a finding of good cause by the Arbitrator, leave is granted to conduct discovery that is reasonably calculated to lead to the discovery of admissible evidence; and (v) as otherwise expressly provided for in this Section 21.23. The parties hereto agree to be bound by the provisions of any limitation on the period of time in which claims must be brought under applicable Law or this Agreement, whichever expires earlier.

21.23.4 Arbitration Complaints and Notices. Any arbitration complaint for an Arbitrable Dispute (a **"Complaint**") or notice of appeal from an arbitration judgment (an "**Appeal Notice**") hereunder shall be served on the Arbitration Parties pursuant to the notice provisions contained in Section 21.5 (in the case of notice to Affiliates of either party hereto, notice to such party shall be deemed sufficient for purposes hereof). For purposes of this Section 21.23, service of all pleadings and other papers, and the calculation of all time deadlines, shall be made in accordance with California procedural law (including any modifications thereto that the Arbitrator or Appellate Arbitrators may make in accordance with California procedural law). However, without any order by the Arbitrator or Appellate Arbitrators, the Arbitration Parties may agree in writing to extend or shorten any time deadline, which will be deemed effective upon written notice by the affected Arbitration Parties to the Arbitration Administrator and all other Arbitration Parties.

21.23.5 Selection of Arbitrator and Appellate Arbitrators.

(a) Within five (5) Business Days after service of a Complaint or an Appeal Notice, as the case may be, the Arbitration Parties will select their jointly agreed upon arbitrator or, in the case of an appeal, three (3) appellate arbitrators. The arbitrator shall be a former judge of the California Superior Court (or, if an insufficient number of such former judges are available to serve, former judges from the United States District Court for the Central District of California) and the appellate arbitrators shall be former judges of the California Court of Appeals (or, if an insufficient number of such former judges are available to serve, former judges from the California Superior Court who sat on the California Court of Appeals by designation, or, if an insufficient number of such former judges are available to serve, former judges from the California Superior Court who served on the bench for ten (10) years or more).

(b) If the Arbitration Parties cannot agree upon an arbitrator or all three (3) appellate arbitrators within such time period, on the fifth (5th) Business Day thereafter, the Arbitration Parties will simultaneously exchange a list of five (5) proposed arbitrators or, in the case of an appeal, ten (10) proposed appellate arbitrators (the **"Party Designations"**). Any persons appearing on both Party Designations shall be designated as the arbitrator or the appellate arbitrators, selected in alphabetical order by last name. If for any reason a person so selected cannot or will not serve as arbitrator or appellate arbitrator, the next person common to both Party Designations in alphabetical order by last name shall be designated as the arbitrator or appellate arbitrator and so on until there are no more persons common to both Party Designations.

(c) If the arbitrator or any appellate arbitrator remains to be selected following the procedures set forth in the preceding subparagraph (b), each Arbitration Party shall have the right to strike up to two names appearing on the other's Party Designation and, on the fifth (5th) Business Day following exchange of the Party Designations, shall notify the other Arbitration Party, in writing, of the names, if any, so stricken (the "**Strike Notices**").

(d) Each party shall then rank each person remaining on both Party Designations in numerical order of preference (1 being the most preferred, 2 being next, and so on), and, on the second (2ND) Business Day following service of the Strike Notices, the Arbitration Parties shall simultaneously exchange their respective rankings (the **"Priority Designations"**). The person with the lowest combined total from the Priority Designations shall be designated as the arbitrator or, in the case of an appeal, the three (3) persons with the lowest combined totals from the Priority Designations shall be designated as the appellate arbitrators. Any ties will be broken by choosing the person first in alphabetical order by last name. If, for any reason, a person so selected cannot or will not serve as arbitrator or appellate arbitrator, the next person in order using the methodology prescribed in this Section 21.23.5 shall be designated as arbitrator or appellate arbitrator and so on until no more names appear on the Arbitration Parties' Priority Designations.

(e) If there are no more names from which to select an arbitrator or appellate arbitrator on the parties' Priority Designations or if any party fails to comply with the selection procedures herein, the Arbitration Administrator shall provide a list of five (5) persons or, in the case of an appeal, ten (10) persons, all of whom shall be former judges complying with the requirements of Section 21.23.5(a). Each Arbitration Party may strike up to two (2) names from this list, and of those who are left the person whose name is first in alphabetical order by last name shall serve as arbitrator or, in the case of an appeal, the first three (3) persons in alphabetical order by last name shall serve as appellate arbitrators. The person selected pursuant to this Section

21.23.5 to serve as arbitrator is referred to herein as the **"Arbitrator"** and the persons selected pursuant to this Section 21.23.5 to serve as appellate arbitrators are referred to herein as the **"Appellate Arbitrators."**

(f) Within two (2) Business Days after selection of the Arbitrator or the Appellate Arbitrators, the Arbitration Parties will inform the Arbitration Administrator, in writing and on a confidential basis, of the name and contact information of the Arbitrator or the Appellate Arbitrators.

(g) If the Arbitrator or any Appellate Arbitrator becomes unable to serve for any reason, the next arbitrator or appellate arbitrator who would have been chosen pursuant to the procedure set forth in this Section 21.23.5 shall be selected or, if there is no such arbitrator or appellate arbitrator available as a result of such procedure, the Arbitration Parties shall repeat the procedure set forth in this Section 21.23.5 to select another arbitrator or appellate arbitrator.

21.23.6 Arbitrator Neutrality. In order to serve as an Arbitrator or Appellate Arbitrator for a Arbitrable Dispute, the appointed Arbitrator or Appellate Arbitrator must be neutral with respect to the matters being arbitrated, the Arbitration Parties, and their counsel, consistent with California Code of Civil Procedure § 170.1. The Arbitration Administrator is responsible for ensuring that appropriate disclosures are made by the Arbitrator and Appellate Arbitrators to achieve and maintain such neutrality. If there is a dispute over the neutrality of an appointed Arbitrator or Appellate Arbitrator, the dispute shall be resolved by the Arbitration Administrator.

21.23.7 Emergency Relief. Subject to the limitations contained in Section 21.21.2, if an Arbitration Party is seeking emergency relief prior to the appointment of the Arbitrator, the parties hereto agree that the AAA Optional Rules for Emergency Measures of Protection shall apply, but that the Arbitration Administrator shall appoint an arbitrator to preside over the emergency proceedings (the "**Emergency Arbitrator**"). The Emergency Arbitrator shall have jurisdiction: (i) only until the selection of the Arbitrator in accordance with Section 21.23.5; and (ii) only over such matters requiring emergency relief.

21.23.8 Arbitration Hearing/Arbitrator's Rulings, Statement of Decision and Judgment. Unless otherwise agreed among all Arbitration Parties and the Arbitrator, there shall be a record of all proceedings conducted in conjunction with any arbitration. The Arbitrator will be vested with the full powers of a judge of the Superior Court of the State of California and will have the right to award or include in the Arbitrator's award any relief that the Arbitrator deems proper in the circumstances, subject to the limitations set forth in Section 21.21.2 on equitable relief and subject to the limitation on liability set forth in Section 21.22, including, without limitation, money damages (with interest on unpaid amounts from the date due) and specific performance, a temporary restraining order, a preliminary and/or permanent injunction or other equitable relief (but only to the extent permitted by Section 21.21.2), provided, that the Arbitrator will not have the authority to declare any mark generic or otherwise invalid except to the extent necessary to rule on any claim of intellectual property infringement between the parties hereto (in which event such ruling shall be binding as between the parties hereto but such ruling shall not be binding as between either party hereto and any other Person). The Arbitrator shall issue rulings, a statement of decision, and a judgment as if the Arbitrator were a judge of the Superior Court of the State of California.

21.23.9 Appeal.

(a) Within twenty (20) Business Days following receipt of any judgment, any Arbitration Party may notify the Arbitration Administrator of an intention to appeal to an arbitral tribunal. To appeal the judgment of an Arbitrator, an Arbitration Party must follow all of the prerequisites for appealing a judgment of the Superior Court of the State of California. All prerequisites ordinarily directed to the clerk of such court shall be directed to the Arbitration Administrator.

(b) All appeals will be made to three (3) Appellate Arbitrators appointed (or replaced, if necessary) pursuant to Section 21.23.5.

(c) The Appellate Arbitrators will conduct a hearing, review the judgment of the Arbitrator, and issue an appellate decision applying the same standards of review (and all of the same presumptions) as if the Appellate Arbitrators were judges of the California Court of Appeal reviewing a judgment of the Superior Court. The Appellate Arbitrators will be vested with the same powers as a California Court of Appeal (including the power to remand a matter to an Arbitrator, or a replacement Arbitrator, in accordance with the rights of a party following an appeal).

(d) The Appellate Arbitrators' decision will be final and binding (unless remanded to the Arbitrator, or replacement Arbitrator, pursuant to subparagraph (c) of this Section 21.23.9), as to all matters of substance and procedure.

21.23.10 Jurisdiction/Venue/Enforcement of Award. The parties hereto consent and submit to the exclusive personal jurisdiction and venue of the Superior Court and the United States District Court, located in the County of Los Angeles, State of California, to compel arbitration of an Arbitrable Dispute in accordance with this Section 21.23, to enforce any arbitration award granted pursuant to this Section 21.23, including, without limitation, any award granting equitable relief, and to otherwise enforce this Section 21.23 and carry out the intentions of the parties to resolve all Arbitrable Disputes through arbitration. All arbitrations under this Section 21.23 shall be conducted in Los Angeles, California.

21.23.11 Discovery. Subject to and without limiting Section 21.23.3, (i) each Arbitration Party will, upon the written request of the other Arbitration Party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim; (ii) at the request of an Arbitration Party, the Arbitrator shall have the discretion to order examination by deposition of witnesses to the extent the Arbitrator deems such additional discovery relevant and appropriate (provided, that each Arbitration Party shall be entitled, in its sole discretion, to conduct depositions of up to five (5) fact witnesses and up to two (2)

expert witnesses); (iii) all objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information; (iv) any dispute regarding discovery, or the relevant scope thereof, shall be determined by the Arbitrator, which determination shall be conclusive; and (v) all discovery shall be completed within the time period established by the Arbitrator.

21.23.12 Res Judicata, Collateral Estoppel and Law of the Case. A decision of the Arbitrator and Appellate Arbitrators shall have the same force and effect with respect to collateral estoppel, res judicata and law of the case that such decision would have been entitled to if decided in a court of law, but in no event shall such award be used by or against an Arbitration Party in a Non-Signatory Dispute.

21.23.13 Confidential Proceedings. All arbitration proceedings, including, without limitation, any appellate proceedings, will be closed to the public and confidential, and all records relating thereto will be maintained by the Arbitration Parties as Confidential Information in accordance with Section 17 and will be permanently sealed, except as necessary to obtain court confirmation of the judgment of the Arbitrator or the decision of the Appellate Arbitrators, as applicable, and except as necessary to give effect to res judicata and collateral estoppel (e.g., in a dispute between the Arbitration Parties that is not an Arbitrable Dispute), in which case all filings with any court shall be sealed to the extent permitted by the court and applicable Law.

21.23.14 Arbitrator Fees and Arbitration Costs. The Arbitrators or Appellate Arbitrators, as the case may be, will have no authority to award any damages that are inconsistent with Section 21.22. The Arbitration Parties will share equally the fees of the Arbitrator and Appellate Arbitrators and administrative costs of the arbitration (including reporter's fees, but not including filing fees), with each side obligated for its pro rata share of the total (subject to reallocation as provided below). The determination of whether there are more than two sides will be made by the Arbitration Administrator, which determination may be reviewed by the Arbitrator upon the request of any Arbitration Party. The fees of the Arbitrator and Appellate Arbitrators and administrative costs of the arbitration paid by the prevailing Arbitration Party (as determined at the conclusion of all proceedings, including any appeal, remand or subsequent appeals) will be awarded as costs to the prevailing Arbitration Party. The entitlement of an Arbitration Party to attorneys' fees and other additional costs shall be determined in accordance with any agreements between the Arbitration Parties governing such matters and California procedural law.

21.23.15 Non-Signatory Legal Actions. As used in this Section 21.23, "Arbitrable Dispute" does not include compulsory or permissive cross-claims between the parties that arise in a legal action brought by or against a non-signatory hereto ("**Non-Signatory Dispute**"). However, a party that has the right to assert a permissive cross-claim against another party in a Non-Signatory Dispute may choose to treat that claim as an Arbitrable Dispute and assert it in accordance with the terms of this Section 21.23.

21.23.16 Expedited Procedures. Consistent with the expedited nature of arbitration, it is the mutual intent of the parties that under all circumstances any controversies, disputes or claims between them be resolved expeditiously, and either Arbitration Party may, upon application to the Arbitrator for good cause shown, move the Arbitrator for extraordinary expedition (including, without limitation, the fixing of a discovery cut-off date and dates for the commencement and completion of hearings). In furtherance thereof and without limiting the foregoing, any application by TDSF to the Arbitrator to move for extraordinary expedition in the case of a Licensee Infringing Use (which application shall be made by TDSF in its sole discretion) shall be deemed to be for good cause (without the requirement of any discovery, hearing or other action or proceeding with respect to such application), and Licensee hereby consents to the granting of any such application by TDSF in the case of a Licensee Infringing Use.

21.23.17 No Declaratory Relief. Notwithstanding anything contained herein to the contrary, Licensee shall not be entitled to submit any action for declaratory relief (or any comparable action for a determination that Licensee has not violated, defaulted under or otherwise breached this Agreement or any other related agreement entered into in connection herewith) to the arbitration proceedings contemplated by this Section 21.23 or in court or through any other dispute resolution mechanism other than as contemplated by Section 21.23.1.

21.23.18 Survivability. The provisions of this Section 21.23 shall survive the expiration or earlier termination of this Agreement indefinitely.

21.24 Certain Licensee Fees.

21.24.1 General. In the case of a Licensee Infringing Use, a Royalty Breach or any other Material Breach by Licensee, without prejudice to any other right or remedy available to TDSF or its Affiliates as a result thereof, Licensee shall pay to TDSF a fee (the "**Licensee Infringement/Breach Fee**") in the amount of Five Thousand Dollars ($5,000) (as adjusted and increased each Contract Year as provided in Section 21.24.2) per day per Facility, Internet Store or other Business Property affected by such Licensee Infringing Use, Royalty Breach or other Material Breach for the period beginning (a) in the case of a Licensee Infringing Use or Royalty Breach, on the second (2nd) Business Day following the day on which TDSF delivers written notice to Licensee of such Licensee Infringing Use or Royalty Breach, as applicable, or (b) in the case of any other Material Breach by Licensee, on the fourth (4th) Business Day following the day on which TDSF delivers written notice to Licensee of such Material Breach, and ending on the day on which such Licensee Infringing Use, Royalty Breach or other Material Breach is Cured, provided, that in no event shall the Licensee Infringement/Breach Fee for any particular Licensee Infringing Use, Royalty Breach or other Material Breach by Licensee exceed either Twenty-Five Thousand Dollars ($25,000) per day or One Hundred Fifty Thousand Dollars ($150,000) in the aggregate (each such daily and aggregate limit, as adjusted and increased each Contract Year as provided in Section 21.24.2, the "**Licensee Infringement/Breach Fee Maximum Amounts**"). For purposes of illustration and without limitation, (i) in the case of a Licensee Infringing Use involving Marketing Materials, each Facility located within any

geographical region in which or for which such Marketing Materials are printed, broadcast, displayed or otherwise distributed and the Internet Store would be considered to be affected by such Licensee Infringing Use, (ii) in the case of a Licensee Infringing Use involving Disney Merchandise, each Facility and the Internet Store offering such Disney Merchandise for sale would be considered to be affected by such Licensee Infringing Use, (iii) in the case of a Licensee Infringing Use involving FF&E Materials, each Facility that uses or displays such FF&E Materials would be considered to be affected by such Licensee Infringing Use, (iv) in the case of a Royalty Breach, each Facility and the Internet Store would be considered to be affected by such Royalty Breach, and (v) in the case of a Material Breach by Licensee of an operating covenant, such as a failure to maintain or refurbish any Facilities in accordance with the terms of this Agreement and/or the Operating Manual, each Facility in which such failure occurs would be considered to be affected by such Material Breach. Any payments of Licensee Infringement/Breach Fees pursuant to this Section 21.24 shall be made by Licensee to TDSF on a weekly basis on each Monday in respect of the seven (7) day period ending on the previous Friday, by wire transfer to the account designated by TDSF for payment of Licensee Payments under Section 7. In the event TDSF seeks money damages against Licensee in connection with any Licensee Infringing Use, Royalty Breach or other Material Breach by Licensee of this Agreement, the payments made by Licensee under this Section 21.24 shall be deducted from the amount of any money damages deemed payable by Licensee to TDSF in connection therewith, provided, that under no circumstances shall TDSF be required to bring any action against Licensee or prove any damages in connection with a Licensee Infringing Use, Royalty Breach or other Material Breach by Licensee of this Agreement in order to obtain the amounts payable under this Section 21.24 and in no event shall TDSF ever be required to reimburse any amounts received under this Section 21.24 (i.e., such as in a case in which the actual amount of money damages proved in connection with any Licensee Infringing Use, Royalty Breach or other Material Breach by Licensee of this Agreement is less than the amount paid by Licensee hereunder in connection with such Licensee Infringing Use, Royalty Breach or other Material Breach).

21.24.2 CPI Adjustments. Beginning effective with the second (2nd) Contract Year and continuing through each and every Contract Year of the Term thereafter, each of the Licensee Infringement/Breach Fee and the Licensee Infringement/Breach Fee Maximum Amounts for each Contract Year shall be the Licensee Infringement/Breach Fee and Licensee Infringement/Breach Fee Maximum Amounts, respectively, for the immediately preceding Contract Year, as adjusted to reflect the increase, if any, in the CPI in accordance with the CPI Adjustment Methodology.

21.24.3 Expenses. Except as otherwise expressly provided elsewhere in this Agreement, each party hereto shall be solely responsible for all costs and expenses arising from the performance of such party's obligations under this Agreement, and Licensee shall be solely responsible for all costs and expenses arising from the operation of the Business, the Facilities, the Internet Store and all other Business Properties pursuant to Section 9.17.1.

21.24.4 Joint and Several Liability of TDS USA and TDS Canada. Notwithstanding anything to the contrary contained herein (other than subparagraph (i) of Section 7.6), TDS USA and TDS Canada shall be jointly and severally liable for all of the liabilities, duties and obligations of TDS USA, TDS Canada and/or Licensee hereunder without regard to (i) the party or parties to whom this Agreement allocates any such liability, duty or obligation, (ii) the owner, operator or location of any Business Property or (iii) the party or parties from whose action, omission, breach or violation any such liability, duty or obligation arises or on whose action, omission, breach or violation any such liability, duty or obligation is based.

21.24.5 Rules of Interpretation. Except as otherwise expressly provided in this Agreement, the following rules shall apply hereto: (i) the singular includes the plural and the plural includes the singular; (ii) "or" is not exclusive, and "include" and "including" are not limiting; (iii) a reference to any Contract includes any permitted modifications, supplements, amendments and replacements; (iv) a reference in this Agreement to a section or Schedule is to the section of or Schedule to this Agreement unless otherwise expressly provided; (v) a reference to a section or paragraph in this Agreement shall, unless the context clearly indicates to the contrary, refer to all sub-parts or sub-components of any said section or paragraph; (vi) words such as "hereunder," "hereto," "hereof" and "herein," and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular clause hereof; (vii) a reference in this Agreement to a "party" (whether in the singular or the plural) shall (unless otherwise indicated herein) include both natural persons and entities (including, without limitation, corporations, partnerships, limited liability companies, limited liability partnerships, trusts or any other form of legal entity); (viii) references herein to "dollars" or "$" shall mean United States dollars unless otherwise specifically stated; and (ix) with respect to any matter requiring the approval or consent of either party hereunder, if no other standard for granting or denying such approval or consent is provided in this Agreement, such determination shall be made by the respective party in its sole discretion.

21.24.6 Language of the Agreement. At the request of the parties hereto, this Agreement and all notices related hereto have been drafted in English. À la requête des parties à la présente, cette entente et tout avis y rapportant ont été et seront rédigés en langue anglaise.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective as of the Effective Date by their respective duly authorized representatives.

**TDSF:**

TDS FRANCHISING, LLC

By: /s/ James M. Kapenstein
Name: James M. Kapenstein

Title: Vice President

By: /s/ David K. Thompson
Name: David K. Thompson
Title: Senior Vice President

**LICENSEE:**

THE DISNEY STORE, LLC

By: /s/ Steven Balasiano
Name: Steven Balasiano
Title: Senior Vice President

By: /s/ Seth Udasin
Name: Seth Udasin
Title: Treasurer

THE DISNEY STORE (CANADA) LTD.

By: /s/ Steven Balasiano
Name: Steven Balasiano
Title: Senior Vice President

**GUARANTEE BY DISNEY WORLDWIDE SERVICES, INC.**

Disney Worldwide Services, Inc., a Florida corporation and a wholly-owned subsidiary of The Walt Disney Company ("**Guarantor**"), acknowledges that it is an Affiliate of TDSF and therefore stands to benefit substantially from the transactions contemplated by this Agreement. Accordingly, as a material inducement to Licensee to enter into this Agreement, which Licensee would not have done in the absence of this guarantee, Guarantor hereby absolutely and unconditionally guarantees to Licensee the full and timely performance of all of the obligations of TDSF under the terms and conditions of this Agreement, including any amendments, modifications, extensions or compromises thereof, required to be performed by TDSF (collectively, the "**Obligations**"); provided, that (a) the term "Obligations" as used herein shall not include obligations under any Contract entered into in connection with this Agreement but rather shall include only obligations arising under this Agreement and (b) notwithstanding anything to the contrary contained herein, Guarantor's obligations under this guarantee shall at all times be limited to a maximum aggregate liability amount equal to Thirty-Five Million Dollars ($35,000,000) (the "**Maximum Guarantee Liability**"). Guarantor acknowledges and agrees that: (i) this is a guarantee of payment and performance and not of collectibility only; (ii) Guarantor's responsibility for the Obligations is in no way conditioned upon any requirement that Licensee first attempt to collect any of the Obligations from TDSF and, upon demand from Licensee, the obligations of Guarantor shall become immediately due and payable, without demand, presentment, protest, notice of acceptance, notice of any obligations incurred, or any other notices of any kind or nature, each of which is expressly waived by Guarantor; (iii) this guarantee shall be binding upon Guarantor notwithstanding the addition, substitution or release of any Person primarily or secondarily liable for any Obligation, the bankruptcy, insolvency or other inability to pay or perform of TDSF, or any other act or omission that might in any manner or to any extent vary the risk of Guarantor or otherwise operate as a release or discharge of Guarantor; (iv) until the Maximum Guarantee Liability has been satisfied, Guarantor shall not exercise any rights against TDSF arising as a result of payment by Guarantor hereunder, by way of subrogation, reimbursement, restitution, setoff, recoupment, counterclaim or otherwise; (v) until the Maximum Guarantee Liability has been satisfied, (a) the payment of any amount due to Guarantor by TDSF is subordinated to the prior payment in full of all of the Obligations, and (b) any amounts received by Guarantor in respect thereof while any Obligations are still outstanding shall be received by Guarantor as trustee for Licensee and shall be promptly paid over to Licensee; and (vi) upon demand by Licensee, Guarantor shall pay all documented out-of-pocket costs and expenses (including court costs and reasonable legal expenses) reasonably incurred by Licensee in connection with the enforcement of this guarantee. Guarantor represents and warrants to Licensee that this guarantee has been duly and validly executed by Guarantor and constitutes the legally valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms. Capitalized terms used herein without definition have the meanings assigned thereto in the Agreement. The terms of Section 21 of the Agreement, including, without limitation, Section 21.22, are hereby incorporated into this guarantee as if set forth in full herein, with the exception that references to "TDSF" therein shall be deemed to be references to "Guarantor" for purposes of this guarantee.

**"Guarantor"**

Disney Worldwide Services, Inc.,

a Florida corporation

By: /s/ James M. Kapenstein
Name: James M. Kapenstein
Title: Vice President

**TABLE OF CONTENTS**

**GUARANTY AND COMMITMENT**

**THIS GUARANTY AND COMMITMENT** (as amended and in effect from time to time, this "**Guaranty and Commitment"**) dated as of November 21, 2004 is made jointly and severally by The Children's Place Retail Stores, Inc., a Delaware corporation ("**TCP**"), and Hoop Holdings, LLC, a Delaware limited liability company ("**Licensee Parent**" and, together with TCP, each an "**Obligor**" and collectively, the "**Obligors**"), in favor of The Disney Store, LLC, a California limited liability company ("**TDS USA**"), The Disney Store (Canada) Ltd., a corporation incorporated under the laws of the Province of Ontario ("**TDS Canada**" and, together with TDS USA, "**Licensee**"), and TDS Franchising, LLC, a California limited liability company ("**TDSF**").

WHEREAS, pursuant to an Acquisition Agreement, dated as of October 19, 2004 (as amended and in effect from time to time, the "**Acquisition Agreement**"), by and among Disney Enterprises, Inc., a Delaware corporation **("DEI**"), Disney Credit Card Services, Inc., a California corporation ("**DCCS**" and, together with DEI, the **"Sellers"**), Licensee Parent and Hoop Canada Holdings, Inc., a Delaware corporation ("**Canadian Parent**") (together with a guarantee of the obligations of Licensee Parent and Canadian Parent thereunder by TCP), on the date hereof, Licensee Parent is acquiring all of the equity interests of TDS USA and Canadian Parent is acquiring all of the equity interests of TDS Canada; and

WHEREAS, Licensee is the tenant under certain leases and the owner, lessee or licensee of various other personal property assets that heretofore have been used in the operation of a chain of specialty retail stores known as the "*Disney Store*"; and

WHEREAS, Licensee desires to continue to operate such chain of specialty retail stores in accordance with the terms of the License Agreement referred to below; and

WHEREAS, TDSF or its Affiliates have heretofore operated an online retail store located on the World Wide Web at www.disneystore.com; and

WHEREAS, Licensee desires to operate such online retail store in accordance with the terms of the License Agreement referred to below; and

WHEREAS, in order to enable Licensee to so operate such chain of specialty retail stores and such online retail store, Licensee and TDSF are entering into, on the date hereof, a License and Conduct of Business Agreement (as amended and in effect from time to time, the "**License Agreement**") pursuant to which TDSF shall grant to Licensee certain rights in specified names, marks, symbols, logos, characters and other proprietary designations and intellectual property of TDSF and its Affiliates, all subject to and in strict adherence to the terms and conditions set forth therein; and

WHEREAS, upon the closing under the Acquisition Agreement, the Obligors shall become the direct and indirect owners of all of the outstanding equity interests of Licensee and therefore expect to receive substantial direct and indirect benefits from the execution, delivery and performance by the Sellers of the Acquisition Agreement and the execution, delivery and licensing of rights by TDSF to Licensee under the License Agreement (the sufficiency of which benefits to support this Guaranty and Commitment are hereby acknowledged); and

WHEREAS, it is a condition precedent to the Sellers' obligation to consummate the transactions contemplated by the Acquisition Agreement and a material inducement to TDSF to enter into the License Agreement (which TDSF would not have done in the absence of this Guaranty and Commitment) that the Obligors execute and deliver this Guaranty and Commitment for the benefit of Licensee and TDSF; and

WHEREAS, the obligations of the Obligors under this Guaranty and Commitment constitute a material part of the consideration for TDSF and its Affiliates to enter into the License Documents (as defined below) and to consummate the transactions contemplated thereby; and

WHEREAS, in consideration of the foregoing premises, on and subject to the terms and conditions provided herein, the Obligors wish (a) to guarantee the payment and performance of the obligations of Licensee and/or its Affiliates to TDSF and/or its Affiliates under or in respect of the License Documents and (b) to commit to invest certain funds in TDS USA to support such obligations and Licensee's operation of the Business;

NOW, THEREFORE, the Obligors, jointly and severally, hereby agree with TDSF and Licensee as follows:

**Section 1. Definitions.**

Capitalized terms defined in the License Agreement and used herein without other definition shall have the respective meanings assigned thereto in the License Agreement. As used in this Guaranty and Commitment, the following terms shall have the respective meanings set forth below:

"**Acquisition Agreement**" has the meaning specified in the recitals to this Guaranty and Commitment.

"**Affiliate Guarantor**" means an Affiliate of TCP that becomes a guarantor of all of the obligations of the Obligors under this Guaranty and Commitment pursuant to Section 4(m) hereof.

"**Approved Letters of Credit**" means irrevocable letters of credit, issued by one (1) or more banks acceptable to TDSF in its business judgment for the account of TCP and/or Licensee Parent as account parties and for the benefit of TDS USA, that (i)

provide that, for any purpose specified in Section 2(b) hereof and/or upon the occurrence of any Event of Default, TDSF shall be authorized to draw, as attorney-in-fact for, or otherwise on behalf of, TDS USA as beneficiary, under any such letter of credit and direct such bank(s) to pay the amount of any such draw solely and directly to TDS USA, and (ii) are otherwise in form and substance satisfactory to TDSF in its business judgment.

"**Arbitration Procedures**" has the meaning specified in Section 17 hereof.

"**Canadian Parent**" has the meaning specified in the recitals to this Guaranty and Commitment and, in addition, shall be deemed to include any Person who is or becomes a "Canadian Parent" under the License Agreement from time to time in accordance with the terms and conditions thereof.

"**Capital Lease Obligations**" shall mean, as to any Person, 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, and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"**cash**" means currency denominated in United States dollars.

"**Cash Equivalents**" means (i) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve (12) months from the date of acquisition; (ii) certificates of deposit and time deposits denominated in United States dollars with maturities of twelve (12) months or less from the date of acquisition, bankers' acceptances with maturities not exceeding twelve (12) months and overnight bank deposits, in each case, with any domestic commercial bank having combined capital and surplus in excess of Five Hundred Million Dollars ($500,000,000) and a Thompson Bank Watch Rating at the time of acquisition of "B" (or the equivalent) or better; (iii) commercial paper having a rating at the time of acquisition of at least "P-1" or the equivalent from Moody's Investors Service, Inc. or at least "A-1" or the equivalent from Standard & Poor's Rating Services and in each case maturing within thirty (30) days after the date of acquisition; and (iv) money market funds, the assets of which constitute Cash Equivalents of the kinds described in subparagraphs (i) through (iii) of this definition. In the event that, after the date of this Guaranty and Commitment, securities, instruments or other items of types not described in clauses (i) through (iv) of this definition become properly classifiable as "Cash Equivalents" under GAAP, the Obligors may request inclusion of such items as Cash Equivalents for the purposes of this Guaranty and Commitment, subject to TDSF's approval thereof in its business judgment.

"**Consolidated EBITDA**" shall mean, for any period, with respect to any Person, Consolidated Net Income of such Person and its Subsidiaries for such period plus, without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) income tax expense (whether or not paid during such period), (b) Consolidated Interest Expense of such Person and its Subsidiaries, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness, (c) depreciation and amortization expense, (d) amortization of intangibles (including, but not limited to, goodwill) and (e) any extraordinary expenses or losses (and, whether or not otherwise includable as separate items in the statement of such Consolidated Net Income for such period, non-cash losses on sales of assets outside of the ordinary course of business) and minus, to the extent included in the statement of such Consolidated Net Income for such period, the sum of (a) interest income (except to the extent deducted in determining Consolidated Interest Expense) and (b) any extraordinary income or gains (and, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, non-cash gains on the sales of assets outside of the ordinary course of business), all as determined on a consolidated basis in accordance with GAAP.

"**Consolidated Interest Expense**" shall mean, for any period, with respect to any Person, total cash interest expense (including that attributable to Capital Lease Obligations) of such Person and its Subsidiaries for such period with respect to all outstanding Indebtedness of such Person and its Subsidiaries (including, without limitation, all commissions, discounts and other fees and charges owed by such Person with respect to letters of credit and bankers' acceptance financing and net costs of such Person under Hedge Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

"**Consolidated Net Income**" shall mean, for any period, with respect to any Person, the consolidated net income (or loss) of such Person and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP and before any reduction in respect of preferred equity dividends; provided, that, in calculating Consolidated Net Income of a Person (for purposes of this definition only, the "**Parent**") and its consolidated Subsidiaries for any period, there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Parent or is merged into or consolidated with the Parent or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of the Parent) in which the Parent or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Parent or such Subsidiary in the form of dividends or similar distributions, (c) the undistributed earnings of any Subsidiary of the Parent to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contract or Law applicable to such Subsidiary, and (d) the cumulative effect of a change in accounting principles.

"**DCCS**" has the meaning specified in the recitals to this Guaranty and Commitment.

"**DEI**" has the meaning specified in the recitals to this Guaranty and Commitment.

"**Direct Obligations**" means, collectively, (i) the Funding Commitment (as such Funding Commitment may be adjusted pursuant to Sections 2(c) and 2(d) hereof) and (ii) all other amounts payable by the Obligors pursuant to the terms hereof in respect of the Funding Commitment, including, without limitation, any interest, fees, costs and expenses (including enforcement costs, court costs and legal, accounting, investment banking, appraisal and other professional fees and expenses), whether direct or indirect, absolute or contingent, due or to become due, existing on the date of this Guaranty and Commitment or hereafter incurred or arising, which may arise under, out of or in connection with this Guaranty and Commitment; provided, that the Direct Obligations shall not include the Guaranteed Obligations.

"**Event of Default**" has the meaning specified in Section 6 hereof.

"**Funding Commitment**" means the commitment by the Obligors to make capital contributions to TDS USA in an aggregate commitment amount equal to One Hundred Million Dollars ($100,000,000) in accordance with the terms of Section 2 hereof (subject to adjustment as provided therein).

"**Guaranteed Obligations**" means all obligations of every kind and nature of Licensee, including, without limitation, any increases to the amounts thereof, any and all Licensee Infringement/Breach Fees (including any Licensee Infringement/Breach Fee incurred or accruing as a result of any failure by the Obligors to honor the Funding Commitment) and any interest, fees, costs and expenses (including enforcement costs) payable in respect thereof, whether direct or indirect, absolute or contingent, due or to become due, existing on the date of this Guaranty and Commitment or hereafter incurred or arising, which may arise under, out of or in connection with the License Agreement or any of the other License Documents; provided, that the Obligors shall not be liable, during any Term, for any Guaranteed Obligations in excess of, in the aggregate, the Guaranty Amount for such Term.

"**Guaranty Amount**" means Twenty-Five Million Dollars ($25,000,000) in the aggregate for each individual Term; provided, that the Guaranty Amount shall be increased by an amount equal to the TDS Canada Funds Amount in the event of a Royalty Breach with respect to any Monthly Royalty Amount that is attributable to TDS USA's use of the Licensed Materials until the later to occur of (a) the commencement of the next Term, if any, or (b) the date on which such Royalty Breach is cured. No payments made in respect of Guaranteed Obligations during any one Term shall reduce the Guaranteed Obligations or the Guaranty Amount for any subsequent Term, which Guaranty Amount shall be Twenty-Five Million Dollars ($25,000,000) (as increased by any unpaid TDS Canada Funds Amount pursuant to the preceding sentence) for each such subsequent Term.

"**Guaranty and Commitment**" has the meaning specified in the preamble to this Guaranty and Commitment.

"**Hedge Agreements**" shall mean all interest rate swaps, caps, collar agreements or similar arrangements entered into by Licensee or its Subsidiaries providing for protection against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies.

"**Insolvency Event**" means (a) any event described in Section 13.6 (Insolvency) of the License Agreement or (b) the initiation of any enforcement action of any kind against TCP, any of its Subsidiaries, or any of their respective assets, whether by means of foreclosure, assignment for the benefit of creditors, or any judicial or other proceeding or process, or delivery of written notice of commencement of any such action, in each case described in this subparagraph (b), by or on behalf of one or more lenders under the Company Credit Facility (as defined in the Acquisition Agreement) or any other loan agreements, credit agreements, lines of credit, working capital or other bank facilities or similar arrangements under which a bank or other financial institution provides loans and/or letters of credit having an aggregate outstanding principal amount equal to or exceeding Ten Million Dollars ($10,000,000) on the date of reference thereto, to TCP and/or any one or more of its Subsidiaries. Notice of default, or acceleration of indebtedness, in either case without further action or notice of commencement of further action, shall not be considered enforcement action for purposes of this definition.

"**License Agreement**" has the meaning specified in the recitals to this Guaranty and Commitment.

"**License Document Breach**" means (i) any Uncured Royalty Breach, (ii) any Uncured Licensee Infringing Use, and (iii) any material breach or violation by Licensee or any of its Affiliates of any representation or warranty under, any material failure by Licensee or any of its Affiliates to perform any of their respective agreements or obligations under, or any material non-compliance by Licensee or any of its Affiliates with any of the terms, provisions or conditions, of, any of the License Documents, which breach, violation, failure or non-compliance is not cured within the applicable cure period specified in such License Document or within twenty (20) Business Days if not so specified, in the case of each of the preceding subparagraphs (i), (ii) and (iii) to the extent that payment by the Obligors of all or any portion of the then-remaining Funding Commitment would be necessary to, or could, (a) prevent such Royalty Breach, Licensee Infringing Use, breach, violation, failure or non-compliance and/or (b) enable Licensee to cure such Royalty Breach, Licensee Infringing Use, breach, violation, failure or non-compliance.

"**License Documents**" means the License Agreement and all other documents, instruments and agreements from time to time executed and/or delivered in connection therewith or pursuant thereto (including, without limitation, the Transitional Administrative Services Agreement, the Transitional Distribution Services Agreement, the Transitional Information Technology Services Agreement and the Transitional Disney Retained Stores Agreement (each as defined in the Acquisition Agreement), but excluding the Acquisition Agreement and this Guaranty and Commitment), as in effect on the date of this Guaranty and Commitment, as may become effective after the date hereof or as subsequently amended, supplemented, modified or amended and restated.

"**Licensee**" has the meaning specified in the preamble to this Guaranty and Commitment and, in addition, shall be deemed to include any Person who is or becomes a "Licensee" under the License Agreement from time to time in accordance with the terms

and conditions thereof.

"**Licensee Parent**" has the meaning specified in the preamble to this Guaranty and Commitment.

"**Material Adverse Effect**" means a material adverse effect on (i) the business, property, operations or condition (financial or otherwise) of the Obligors, on a consolidated basis, or (ii) the validity or enforceability of any material provision of this Guaranty and Commitment or any of the License Documents, the rights or remedies of TDSF or Licensee hereunder or thereunder or the ability of the Obligors to perform their obligations (including, without limitation, payment of the Obligations) hereunder or thereunder in accordance with the terms hereof or thereof.

"**NWC Dividend Payments**" means the payment of any dividends or other distributions pursuant to and in accordance with the terms of Section 9.13.3(b)(III) of the License Agreement.

"**Obligations**" shall mean, collectively, the Direct Obligations and the Guaranteed Obligations.

"**Obligor**" and "**Obligors**" have the respective meanings specified in the preamble to this Guaranty and Commitment.

"**Restricted Payment**" means (i) any dividend, distribution or other payment by any Person to the direct or indirect holders of its equity interests (other than pursuant to and in accordance with the TCP Tax Sharing Agreement or the TCP Intercompany Services Agreement) or (ii) any transfer of properties, rights or assets by any Person to the direct or indirect holders of its equity interests, to the extent that the consideration received by the transferring Person at the time of such transfer is less than the fair market value of the properties, rights or assets so transferred; provided, that neither a dividend, distribution or other payment nor a transfer of properties, rights or assets by TDS Canada to Canadian Parent or TDS USA or by Canadian Parent to TDS USA shall be or be deemed to be a "Restricted Payment."

"**Sellers**" has the meaning specified in the recitals to this Guaranty and Commitment.

"**TCP**" has the meaning specified in the preamble to this Guaranty and Commitment. In the event that all or any portion representing more than fifty percent (50%) of the business, revenues, profits, assets, properties and/or operations of TCP are Transferred (in any single transaction or in the aggregate) to or otherwise undertaken by one or more Affiliates of TCP, whether by way of a sale of assets, merger, reorganization, consolidation, operation of law, transition to a new operating company or otherwise, the obligations, restrictions and provisions pertaining to TCP hereunder shall apply in full to both TCP and each such Affiliate of TCP, each such Affiliate of TCP shall be deemed to be an "Obligor" hereunder and TCP and each such Affiliate of TCP shall be jointly and severally liable for all of the liabilities, duties and obligations of TCP hereunder (including the Obligations), and each such Affiliate shall, as a condition of any such Transfer, be required to execute and deliver an Assumption Agreement substantially in the form of Exhibit A hereto, pursuant to which such Affiliate shall assume the liabilities, duties, obligations, restrictions and provisions applicable to an "Obligor" hereunder, and accept the designation as an "Obligor" hereunder, and the Obligors shall be required to provide an original counterpart of such Assumption Agreement to TDSF. In the event that such Affiliate of TCP does not execute and deliver such Assumption Agreement, or such Assumption Agreement is for any reason not delivered to TDSF, such Affiliate of TCP shall nonetheless automatically become an Obligor hereunder, for all purposes hereof and shall be bound by the provisions hereof to the fullest extent permitted by Law.

"**TDS Canada**" means The Disney Store (Canada) Ltd., a corporation incorporated under the laws of the Province of Ontario, until (i) the continuation of such Entity in, and the amalgamation of such entity with an entity incorporated in, the province of New Brunswick, Canada, at which time "TDS Canada" shall refer to Hoop Canada, Inc., a corporation incorporated under the laws of the Province of New Brunswick, as successor to the original corporation, and (ii) the execution and delivery of the Canadian Joinder as contemplated by Section 9.12.1(a)(II) of the License Agreement, whereupon "TDS Canada" shall refer individually and collectively to Hoop Canada, Inc. and New Canadian Limited Partnership.

"**TDS Canada Funds Amount**" means, as of any date, the aggregate amount of all cash and cash equivalents of TDS Canada and all funds available under any and all Debt Facilities of TDS Canada, which cash, cash equivalents and funds would have been available for use by TDS Canada to prevent and/or cure a Royalty Breach with respect to any Monthly Royalty Amount that is attributable to TDS USA's use of the Licensed Materials but for the fact that TDS Canada is not liable for the payment of any such Monthly Royalty Amount pursuant to Section 7.6 of the License Agreement.

"**TDS USA**" means The Disney Store, LLC, a California limited liability company, until the consummation of the TDS USA Merger contemplated by Section 9.12.1(a)(I) of the License Agreement, whereupon the Entity that survives the TDS USA Merger, as the successor to TDS USA, shall be and be deemed to be "TDS USA."

"**TDSF**" has the meaning specified in the preamble to this Guaranty and Commitment.

"**Term**" means the Initial Term or any Renewal Term.

"**Wells Fargo Credit Facility**" means the Wells Fargo Credit Facility, as defined in the Acquisition Agreement, as in effect on the date hereof, unless otherwise provided.

**Section 2. Funding Commitment and Other Direct Obligations.**

(a) On the date hereof, immediately following consummation of the transactions contemplated by the Acquisition Agreement, the Obligors have invested Fifty Million Dollars ($50,000,000) of the Funding Commitment in TDS USA in the form of cash or freely transferable Cash Equivalents.

(b) The Obligors hereby jointly and severally agree to invest the remaining balance of the Funding Commitment as and to the extent needed to enable Licensee and/or its Affiliates to comply with their respective obligations under the License Documents (including, without limitation, any obligations of Licensee in the event of expiration or earlier termination of the Licensee Agreement as set forth in Section 16 thereof), to prevent and/or cure any License Document Breach and to fund any operating losses incurred by Licensee or its Affiliates in connection with the operation of the Business. The Obligors may satisfy their obligations with respect to the remaining balance of the Funding Commitment by investing in TDS USA in the form of cash or freely transferable Cash Equivalents or by providing to TDS USA one or more Approved Letters of Credit or any combination of the foregoing; provided, that, for purposes of clarification, the Obligors' obligations under this Section 2(b) shall not be or be deemed to be fulfilled until the entire Funding Commitment has been fully and indefeasibly paid and satisfied through the payment of cash or freely transferable Cash Equivalents (including pursuant to any draw under an Approved Letter of Credit) pursuant to and in accordance with the terms of this Guaranty and Commitment. For the purposes of this Section 2(b) only, Restricted Payments that Licensee and its Subsidiaries are permitted under Section 9.13.3(b)(III) or 9.13.3(b)(IV) of the License Agreement to make to the Obligors and Restricted Payments by TDS USA to the Obligors that have been approved by TDS USA's Independent Directors in accordance with the terms of the License Agreement and applicable Law shall be treated as payments by the Obligors in respect of the Funding Commitment in "cash" to the extent that the Obligors (i) notify TDSF in writing of their intent not to receive any such Restricted Payment and retain the amount thereof as an additional investment in TDS USA pursuant to this Section 2(b), and (ii) in fact cause TDS USA (or its Subsidiaries) to retain the amount of any such Restricted Payment as an additional investment pursuant to this Section 2(b).

(c) The Funding Commitment, to the extent not previously fully and indefeasibly paid and satisfied pursuant to and in accordance with the terms of this Guaranty and Commitment, shall be reduced dollar-for-dollar by the cumulative amount of Consolidated EBITDA of Licensee and its Subsidiaries generated from the Effective Date through any applicable date of calculation; provided, that in no event shall the Funding Commitment be reduced pursuant to this Section 2(c) by an amount greater than Ten Million Dollars ($10,000,000) in the aggregate and in no event shall Licensee ever be required to refund to any Obligor any portion of the Funding Commitment that has been previously paid, notwithstanding any subsequent reduction of the Funding Commitment pursuant to this Section 2(c).

(d) In the event that Licensee makes any Restricted Payments to any of the direct or indirect holders of its equity interests, the unpaid balance of the Funding Commitment shall be increased dollar-for-dollar, but not to an amount greater than Ninety Million Dollars ($90,000,000), by the amount of such Restricted Payments, except with respect to Restricted Payments constituting NWC Dividend Payments, which shall not result in any increase in the unpaid balance of the Funding Commitment.

(e) The Obligors hereby jointly and severally agree, as principal obligors and not as guarantors only, without limitation as to amount, to pay to TDSF, on demand, all fees, costs and expenses (including without limitation court costs and legal, accounting, investment banking, appraisal and any other applicable professional fees and expenses), incurred or expended by TDSF or its Affiliates in connection with the performance of the Obligations and this Guaranty and Commitment and the enforcement thereof and hereof.

(f) The Obligors acknowledge and agree that TDSF has relied on the undertaking of the Funding Commitment and the other Direct Obligations by the Obligors in agreeing to enter into the Acquisition Agreement and the License Documents and to consummate the transactions contemplated thereby. In particular, TDSF is relying on the payment by the Obligors of the Funding Commitment to enable Licensee to perform its obligations under the License Agreement. In consideration of the foregoing, the Obligors agree that (i) subject to and in accordance with the terms of subparagraph (i) of Section 6 hereof, if an Insolvency Event occurs, the Obligors will pay any unpaid balance of the Funding Commitment, in addition to any unpaid portion of the Guaranty Amount, to TDSF and (ii) subject to and in accordance with the terms of subparagraph (ii) of Section 6 hereof, if a License Document Breach occurs, the Obligors will pay to TDSF any amounts due under Section 3 hereof with respect to any Guaranteed Obligations, up to the unpaid portion of the Guaranty Amount, and, if applicable, pay to TDS USA on demand any additional amounts that may be necessary, up to the unpaid balance of the Funding Commitment, to enable Licensee to cure such License Document Breach.

**Section 3. Unconditional Guaranty of Payment and Performance of Guaranteed Obligations.**

(a) The Obligors hereby jointly and severally guarantee to TDSF the full and punctual payment when due (whether at scheduled payment date, by required prepayment, by acceleration or otherwise), as well as the performance, of all of the Guaranteed Obligations for each Term of the License Agreement, including all such Guaranteed Obligations that would become due but for the operation of the automatic stay pursuant to Section 65(2)(a) of the Federal Bankruptcy Code and the operation of Sections 502(b) and 506(b) of the Federal Bankruptcy Code; provided, however, the Obligors' liability with respect to the Guaranteed Obligations shall be limited during each Term to the Guaranty Amount. This Guaranty and Commitment is an absolute, unconditional and continuing guaranty of the full and punctual payment and performance of all of the Guaranteed Obligations and not of their collectibility only and is in no way conditioned upon any requirement that TDSF first attempt to collect any of the Guaranteed Obligations from Licensee or resort to any collateral security or other means of obtaining payment. Should Licensee default in the payment or performance of any of the Guaranteed Obligations and fail to cure such default within any applicable grace period, the obligations of the Obligors hereunder with respect to such Guaranteed Obligations in default shall become immediately due and payable to TDSF, for the benefit of TDSF, without demand or notice of any nature to the Obligors, all of

which are expressly waived by the Obligors. Payments by the Obligors hereunder may be required by TDSF on any number of occasions. All payments of the Guaranteed Obligations by the Obligors hereunder shall be made to TDSF in the manner specified for payment of Licensee Payments in Section 7.3 (Manner of Payments) of the License Agreement within five (5) Business Days following the date on which the obligations of the Obligors hereunder with respect to such Guaranteed Obligations become due and payable pursuant to this Section 3(a).

(b) If for any reason Licensee has no legal existence or is under no legal obligation to discharge any of the Guaranteed Obligations, or if any of the Guaranteed Obligations have become irrecoverable from Licensee by reason of Licensee's insolvency, bankruptcy or reorganization or by other operation of law or for any other reason, this Guaranty and Commitment shall nevertheless be binding on the Obligors and any Affiliate Guarantors to the same extent as if the Obligors and any Affiliate Guarantors at all times had been the principal obligors on all such Guaranteed Obligations (up to the Guaranty Amount). In the event that acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of Licensee, or for any other reason, all amounts otherwise payable under the terms of the License Documents, or any other agreement evidencing, securing or otherwise executed in connection with any Guaranteed Obligation (up to the Guaranty Amount) shall be immediately due and payable by the Obligors and any Affiliate Guarantors.

(c) The Direct Obligations and the Guaranteed Obligations are cumulative and may be enforced by TDSF separately or collectively. No payments in respect of the Guaranteed Obligations shall reduce the amount of the Direct Obligations, and no payments in respect of the Direct Obligations or other investments, contributions or payments by any Obligor or Affiliate Guarantor to or on behalf of Licensee shall reduce the amount of the Guaranteed Obligations or the Guaranty Amount.

(d) The Affiliate Guarantors (if any) hereby jointly and severally guarantee to TDSF the full and punctual payment when due (whether at scheduled payment date, by required prepayment, by acceleration or otherwise), as well as the performance, of all of the Obligations for each Term of the License Agreement, including all such Obligations that would become due but for the operation of the automatic stay pursuant to Section 65(2)(a) of the Federal Bankruptcy Code and the operation of Sections 502(b) and 506(b) of the Federal Bankruptcy Code; provided, however, the Affiliate Guarantors' and the Obligors' collective liability with respect to the Guaranteed Obligations shall be limited during each Term to the Guaranty Amount. This Guaranty and Commitment is an absolute, unconditional and continuing guaranty of the full and punctual payment and performance of all of the Obligations and not of their collectibility only and is in no way conditioned upon any requirement that TDSF first attempt to collect any of the Obligations from the Obligors or Licensee or resort to any collateral security or other means of obtaining payment. Should the Obligors or Licensee default in the payment or performance of any of the Obligations and fail to cure such default within any applicable grace period, the obligations of the Affiliate Guarantors hereunder with respect to such Obligations in default shall become immediately due and payable to TDSF, for the benefit of TDSF, without demand or notice of any nature to the Affiliate Guarantors, all of which are expressly waived by the Affiliate Guarantors. Payments by the Affiliate Guarantors hereunder may be required by TDSF on any number of occasions. All payments of the Obligations by the Affiliate Guarantors hereunder shall be made to TDSF in the manner specified for payment of Licensee Payments in Section 7.3 (Manner of Payments) of the License Agreement within five (5) Business Days following the date on which the obligations of the Affiliate Guarantors hereunder with respect to such Obligations become due and payable pursuant to this Section 3(d).

**Section 4. Representations, Warranties and Covenants of the Obligors and any Affiliate Guarantors**. TCP, Licensee Parent and each Affiliate Guarantor (if any), jointly and severally, represent and warrant to, and covenant with, TDSF and Licensee as follows, in each case as of the date hereof and as of the commencement date of each Renewal Term with the same effect as though made at such time (except that any representation or warranty made as of a particular date shall be true as of such date):

(a) TCP is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Licensee Parent is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Each Affiliate Guarantor (if any) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each of the Obligors has the requisite power and authority to (i) execute and deliver this Guaranty and Commitment and the documents and instruments contemplated hereby, (ii) perform and comply with all of the terms, conditions and covenants to be performed and complied with by it hereunder and thereunder and (iii) own its properties and assets and carry on its business as currently conducted.

(b) All necessary action on the part of each of the Obligors has been duly and validly taken to authorize the execution, delivery and performance of this Guaranty and Commitment and such other agreements and instruments to be executed and delivered by the Obligors in connection herewith. All necessary action on the part of each Affiliate Guarantor (if any) has been duly and validly taken to authorize the execution, delivery and performance of this Guaranty and Commitment and such other agreements and instruments to be executed and delivered by such Affiliate Guarantor in connection herewith. This Guaranty and Commitment has been duly executed and delivered by the Obligors and constitutes the legal, valid and binding obligation of each such Obligor, enforceable against each such Obligor in accordance with the terms hereof. A guaranty of the Obligations under this Guaranty and Commitment has been duly executed and delivered by each Affiliate Guarantor (if any) and constitutes the legal, valid and binding obligation of each such Affiliate Guarantor, enforceable against each such Affiliate Guarantor in accordance with the terms of such guarantee and of this Guaranty and Commitment.

(c) Except as set forth on TDS Schedule 4.8.2 to the Acquisition Agreement, no consent, authorization, approval, order, license, certificate or permit of or from, or declaration or filing with, any Governmental Entity is required for the execution, delivery and performance by the Obligors of this Guaranty and Commitment or any of the agreements or instruments contemplated hereby. Neither the execution, delivery and performance by the Obligors or any Affiliate Guarantors of this Guaranty and Commitment, any assumption or guaranty of obligations hereunder, or such other agreements and instruments nor the

consummation of the transactions contemplated hereby or thereby will: (i) violate any provision of the Governing Documents of any Obligor or any Affiliate Guarantor; (ii) violate any Law to which any Obligor or any Affiliate Guarantor is subject that would have a Material Adverse Effect; (iii) violate any material Contract to which any Obligor or any Affiliate Guarantor is a party or is subject, or (iv) result in the imposition of any material Encumbrance against any Obligor or any Affiliate Guarantor or any of their respective properties.

(d) There is no Action pending or, to the knowledge of the Obligors, threatened against or affecting any Obligor or any of their respective Affiliates or any of its or their properties or assets that has or would reasonably be expected to have a Material Adverse Effect.

(e) No Obligor has any reason to believe that the Obligors would be unable to fully pay and perform the Obligations and their other obligations hereunder.

(f) Immediately after the execution and delivery of this Guaranty and Commitment (including after giving effect to the execution, delivery and performance of this Guaranty and Commitment and the License Documents and the incurrence by the Obligors of the Obligations), (i) the fair market value of the assets of both (A) the Obligors taken together but without their consolidated Subsidiaries and (B) the Obligors on a consolidated basis with their Subsidiaries, exceeds and will exceed their liabilities, taken together but without their consolidated Subsidiaries and on a consolidated basis with their Subsidiaries, (ii) the present fair saleable value of the assets of both (A) the Obligors taken together but without their consolidated Subsidiaries and (B) the Obligors on a consolidated basis with their Subsidiaries, exceeds and will exceed the liabilities of both (A) the Obligors taken together but without their consolidated subsidiaries and (B) the Obligors on a consolidated basis with their Subsidiaries, (iii) both (A) the Obligors taken together but without their consolidated Subsidiaries and (B) the Obligors on a consolidated basis with their Subsidiaries, are and will be able to pay their debts as such debts respectively mature or otherwise become absolute or due, and (iv) neither (A) the Obligors taken together but without their consolidated Subsidiaries nor (B) the Obligors on a consolidated basis with their Subsidiaries, have or will have an unreasonably small capital with which to conduct their operations.

(g) Since December 31, 2003, there has been no event, development or circumstance that has had or would reasonably be expected to have a Material Adverse Effect.

(h) None of the Obligors or any Affiliate Guarantors is in default under or with respect to, or in breach or violation of, any of its material obligations under any material contract, agreement, instrument, indenture, lease, mortgage, security document or other document in any respect. No Event of Default has occurred and is continuing.

(i) Each of the Obligors and Affiliate Guarantors has fully reviewed each of the License Documents and acknowledges and accepts the terms thereof. The Obligors, jointly and severally, hereby agree to (i) perform and comply with, (ii) cause Licensee's Affiliates to perform and comply with and/or (iii) assist Licensee in the performance of and compliance with all of the representations, warranties, terms, conditions, covenants and obligations under any of the License Documents relating or applicable to any of Licensee's Affiliates, including the Obligors; *provided, however,* that the Obligors shall not be required by this Section 4(i) to expend funds in an amount exceeding the then-remaining portion of the Funding Commitment and the Guaranty Amount to cause Licensee to comply with any provisions of the License Documents applicable solely to Licensee (it being understood that this proviso does not apply to provisions applicable to any Affiliates of Licensee).

(j) No statement or information contained in this Guaranty and Commitment, any License Document or any certificate furnished by or on behalf of the Obligors to TDSF for use in connection with the transactions contemplated by this Guaranty and Commitment or any License Document contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading. There is no fact known to any Obligor that would reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed in this Guaranty and Commitment, the License Documents or any other documents, certificates and statements furnished to TDSF for use in connection with the transactions contemplated hereby or by the License Documents.

(k) TCP agrees that, in the event that the Wells Fargo Credit Facility (or any amended, refinanced or replacement debt facility) contains any limitations, restrictions or prohibitions on the capital expenditures or investments of TCP or its Affiliates, TCP shall enter into, and maintain continuously through January 31, 2009, a covenant in the Wells Fargo Credit Facility (or any amended, refinanced or replacement debt facility) providing that it will reserve solely for the payment of the Funding Commitment, and not invest in any other Person or use (by means of incurring direct or indirect obligations or otherwise) or expend for any other purpose, the respective amounts indicated in the table below (or, if less, the then-remaining Funding Commitment) as portions of the amounts permitted to be expended or invested per fiscal year or other applicable period pursuant to Section 7.20 of the Wells Fargo Credit Facility (or the corresponding provision of any amended, refinanced or replacement debt facility):

| Period | Amount to be Preserved for Funding Commitment |
|---|---|
| Closing Date through January 31, 2006 | $10,000,000 |
| February 1, 2006 - January 31, 2007 | $15,000,000 |
| February 1, 2007 - January 31, 2008 | $20,000,000 |
| February 1, 2008 - January 31, 2009 | $15,000,000 |

(l) Each of the Obligors agrees that it will neither cause Licensee to make, nor will such Obligor accept, any NWC Dividend Payment or other Restricted Payment of any kind from or on behalf of Licensee or its Subsidiaries, directly or indirectly, unless such Restricted Payment is either (i) permitted by Section 9.13.3(b) of the License Agreement without the approval of the Independent Directors of Licensee or its Affiliates or (ii) approved by the Independent Directors of Licensee or its Affiliates.

(m) In the event that any portion representing five percent (5%) or more of the business, revenues, profits, assets, properties and/or operations of TCP are Transferred (in any single transaction or in the aggregate) to, or otherwise undertaken by, one or more Affiliates of TCP, whether by way of a sale of assets, merger, reorganization, consolidation, operation of law, transition to a new operating company or otherwise, then each such Affiliate of TCP receiving any of the business, revenues, profits, assets, properties and/or operations of TCP shall be deemed for all purposes hereof an "Affiliate Guarantor" hereunder, and TCP and such Affiliate of TCP and all other such Affiliates of TCP shall be jointly and severally liable for all of the liabilities, duties and obligations of the Affiliate Guarantors hereunder (including the Obligations), and each such Affiliate shall, as a condition of any such Transfer, be required to execute and deliver, and to provide TDSF an Affiliate Guaranty in substantially the form of Exhibit B hereto, pursuant to which such Affiliate shall guarantee the liabilities, duties, obligations, restrictions and provisions of the Obligors hereunder, and accept the designation as an "Affiliate Guarantor" hereunder and the Obligors shall be required to provide an original counterpart of such Affiliate Guaranty to TDSF. In the event that such Affiliate of TCP does not execute and deliver such Affiliate Guaranty, or such Affiliate Guaranty is for any reason not delivered to TDSF, such Affiliate of TCP shall nonetheless automatically become an Affiliate Guarantor hereunder for all purposes hereof and shall be bound by the provisions hereof to the fullest extent permitted by Law. For the purposes of this Section 4(m), any transfer of employees to an Affiliate shall not itself constitute a transfer of business of an Obligor, but any revenues, profits, assets, properties and/or operations transferred as a result of any such transfer of employees shall be considered in the calculation of the five percent (5%) of business, revenues, profits, assets, properties and/or operations of TCP contemplated by the first sentence of this Section 4(m). This Section 4(m) shall not apply to any Affiliate of TCP that becomes an Obligor pursuant to the definition of "TCP".

(n) At least fifteen (15) Business Days prior to the expected effective date thereof, the Obligors shall provide TDSF with initial drafts of all amendments, refinancings or replacements to be entered into by TCP or its Affiliates in connection with the Wells Fargo Credit Facility (or any other debt facility of TCP or its Affiliates in place thereof) and shall, thereafter, provide TDSF with each revised draft of any such amendment, refinancing or replacement that is distributed between the parties thereto (redlined to reflect changes therein). TDSF shall have the right to review and comment on all drafts of such amendments, refinancings or replacements, which comments shall be considered by TCP and its Affiliates in good faith, and the final versions of all terms and provisions of such amendments, refinancings or replacements that, as reasonably determined by TDSF, relate to or affect in any manner this Guaranty and Commitment, the Acquisition Agreement or any of the License Documents, the rights or obligations of the parties hereunder or thereunder, or the Licensed Materials, shall be subject to the prior written approval of TDSF, which approval shall not be unreasonably withheld (such approval or disapproval to be communicated to TCP within five (5) Business Days after such final versions are provided to TDSF). TCP hereby agrees to use all of its commercially reasonable efforts, and to cause its Affiliates to use all of their commercially reasonable efforts, to resolve or cause the resolution of (including, without limitation, using all of its commercially reasonable efforts to negotiate with the applicable lenders and/or their representatives), any issues arising out of or resulting from the exercise by TDSF of its approval rights under this Section 4(n). Any proposed amendment of the Wells Fargo Credit Facility that is not approved by TDSF in accordance with and as provided in this Section 4(n) or that does not otherwise comply with the other terms and provisions of this Guaranty and Commitment (including, without limitation, the other terms and provisions of this Section 4(n)), or that does not comply with all of the terms and provisions of the Acquisition Agreement and the License Documents, shall be deemed to be a breach of this Guaranty and Commitment. TCP and its Affiliates shall be required to comply with the terms and provisions of this Section 4(n) only through and including January 31, 2009.

**Section 5. Waivers by Obligors and any Affiliate Guarantors; TDSF's and Licensee's Freedom to Act**. The Obligors, jointly and severally, and any Affiliate Guarantors, jointly and severally, agree that the Obligations will be paid and performed strictly in accordance with their respective terms, regardless of any Law now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of TDSF or Licensee with respect thereto. The Obligors and any Affiliate Guarantors waive promptness, diligences, presentment, demand, protest, notice of acceptance, notice of any Obligations incurred and all other notices of any kind other than notices expressly provided for in the License Documents, proof of reliance of TDSF or Licensee on this Guaranty and Commitment, all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar Law now or hereafter in effect (including without limitation , Section 2809 of the California Civil Code, Sections 359.5 and 580d of the California Code of Civil Procedure, Sections 2787 to 2855, inclusive, and Section 3433 of the California Civil Code) any right to require the marshalling of assets of Licensee or any other Person primarily or secondarily liable with respect to any of the Obligations, and all suretyship defenses generally. Without limiting the generality of the foregoing, each Obligor and any Affiliate Guarantor agree to the provisions of any instrument evidencing, securing or otherwise executed in connection with any Obligation and agrees that the obligations of the Obligors and any Affiliate Guarantors hereunder shall not be released or discharged, in whole or in part, or otherwise affected by (a) the failure of TDSF to assert any claim or demand or to enforce any right or remedy against Licensee or any other Person primarily or secondarily liable with respect to any of the Obligations; (b) any extensions, compromises, refinancing, consolidation or renewals of any Obligation; (c) any change in the time, place or manner of payment of any of the Obligations or any rescissions, waivers, compromises, refinancing, consolidation or other amendments or modifications to any of the terms or provisions of the License Documents, or any other agreement evidencing, guarantying, securing or otherwise executed in connection with any of the Obligations; (d) the addition, substitution or release of any Person primarily or secondarily liable for any Guaranteed Obligation; (e) the adequacy of any rights that TDSF or Licensee may have against any collateral security or other means of obtaining repayment of any of the Obligations; (f) the impairment of any collateral securing any of the Obligations, including, without limitation, the failure to perfect or preserve any rights that TDSF or Licensee might have in such collateral security or the substitution, exchange, surrender, release, loss or destruction of any such collateral security; (g) any

defense, right of offset or counterclaim that may at any time be available to be asserted by Licensee or any other Person against TDSF or any of its Affiliates; or (h) any other circumstance, event, act or omission whatsoever that might in any manner or to any extent vary the risk of such Obligor or any Affiliate Guarantor or otherwise operate as a release, exoneration or discharge (equitable or legal) of such Obligor or any Affiliate Guarantor, all of which may occur or be done without notice to any Obligor or any Affiliate Guarantors. To the fullest extent permitted by Law, each Obligor and any Affiliate Guarantor hereby expressly waive any and all rights or defenses arising by reason of (i) any "one action" or "anti-deficiency" law that might otherwise prevent TDSF or Licensee from bringing any action, including any claim for a deficiency, against such Obligor or any Affiliate Guarantor before or after TDSF's or Licensee's commencement or completion of any foreclosure action, whether judicially, by exercise of power of sale or otherwise, or (ii) any other Law that in any other way would otherwise require any election of remedies by TDSF or Licensee.

**Section 6. Default; Acceleration; Other Remedies**. If any of the following events (each, an "**Event of Default**") shall occur:

(a) any Obligor shall fail to pay on demand or, as applicable, when due and payable, or any Affiliate Guarantor shall fail to pay in accordance with the terms of this Guaranty and Commitment, any portion of the Obligations and shall fail to cure such failure within ten (10) Business Days following written notice thereof from TDSF or any of its Affiliates; or

(b) any Obligor or Affiliate Guarantor shall breach or violate, fail to perform any of its obligations (other than obligations of the kinds described in subparagraph 6(a)) under, or fail to comply with any of the other terms or provisions of, this Guaranty and Commitment and shall fail to cure such breach, violation or failure within ten (10) Business Days following written notice thereof from TDSF or any of its Affiliates; or

(c) any Obligor or Affiliate Guarantor shall breach in any material respect (*provided, that,* any representation or warranty of any Obligor or Affiliate Guarantor contained herein that is already qualified by materiality shall be deemed to be not so qualified for purposes of this Section 6(c), so that there will be no duplication between such qualifier contained within such representation or warranty and the "materiality" qualifier in this subparagraph) any representation or warranty of such Obligor in this Guaranty and Commitment or in any certificate or notice given in connection herewith and shall fail to cure such breach within ten (10) Business Days following written notice thereof from TDSF or any of its Affiliates; or

(d) any Obligor or Affiliate Guarantor shall notify any other party hereto of its intent to terminate this Guaranty and Commitment or its obligations hereunder and shall fail to rescind such notification in writing delivered to TDSF and Licensee within ten (10) Business Days following such notification; or

(e) a License Document Breach shall occur; or

(f) an event of default shall occur under the Company Credit Facility, as defined in the Acquisition Agreement, or any other loan agreements, credit agreements, lines of credit, working capital or other bank facilities or similar arrangements under which a bank or other financial institution provides loans and/or letters of credit to TCP and/or any one or more of its Subsidiaries, and shall be continuing beyond any applicable grace or cure periods specified therefor in such Company Credit Facility or in any other loan agreements, credit agreements, lines of credit, working capital or other bank facilities or similar arrangements under which a bank or other financial institution provides loans and/or letters of credit to TCP and/or any one or more of its Subsidiaries, and such event of default shall have resulted in indebtedness of TCP and/or its Subsidiaries in aggregate outstanding principal amount equal to or exceeding Ten Million Dollars ($10,000,000) being or becoming immediately due and payable; or

(g) an Insolvency Event shall occur (it being understood that, in the case of an Insolvency Event for which a grace period is specified in Section 13.6 of the License Agreement, an Insolvency Event shall be deemed to have occurred only upon the expiration of such grace period);

THEN, or at any time thereafter while any such Event of Default is continuing:

(i) In the case of the occurrence of any Insolvency Event (other than any Insolvency Event described in subparagraph (vii) of Section 13.6 (Insolvency) of the License Agreement in which (x) the proceeding is instituted or brought against Licensee and is not consented to or acquiesced in by Licensee and (y) TDSF or any of its Affiliates is one of the petitioning creditors instituting such proceeding), the entire unpaid amount (if any) of the Funding Commitment, any unpaid portion of the Guaranty Amount and all Direct Obligations shall automatically become immediately due and payable to TDSF, without presentment, demand, protest or notice or the necessity of any other action of any kind, all of which are hereby expressly and irrevocably waived by the Obligors and any Affiliate Guarantors, and, with respect to the Guaranty Amount, without regard to whether the Obligors or any Affiliate Guarantors have, prior to or on the date of such Insolvency Event, contributed to or otherwise invested in Licensee amounts in excess of the Funding Commitment; provided, that none of such amounts shall so become immediately due and payable to TDSF if, as of the date of such Insolvency Event, the License Agreement shall have been terminated by Licensee pursuant to Section 14.1 (Material Breach), 14.2 (Withdrawn or Retired Character Properties), 14.3 (Loss of Use of "*Disney*" Name) or subparagraph (ii) of Section 14.4 (Uncured Material Breach of Certain Covenants) of the License Agreement;

(ii) In the case of the occurrence of any Event of Default other than an Event of Default of a kind described in subparagraph (i) of this Section 6, TDSF may, by notice to the Obligors and any Affiliate Guarantors, declare the amount then due under Section 3 hereof with respect to any Guaranteed Obligations, up to the unpaid portion of the Guaranty Amount, to be immediately due and payable to TDSF and, to the extent that additional funds are necessary to cure any such License Document Breach, declare the amount necessary to cure such License Document Breach as determined by TDSF in its business judgment, up

to the remaining balance of the Funding Commitment, to be immediately due and payable to TDS USA, in each case without presentment, demand, protest, further notice or the necessity of any other action of any kind, all of which are hereby expressly and irrevocably waived by the Obligors and any Affiliate Guarantors; and

(iii) In case any one or more Events of Default shall have occurred and be continuing, and whether or not the due dates of any or all of the Obligations shall have been accelerated, TDSF may draw, as attorney-in-fact for, or otherwise on behalf of, TDS USA as beneficiary, under any outstanding Approved Letters of Credit and direct the applicable bank(s) to pay the amount of any such draw directly to TDS USA, may exercise any and all rights and remedies of a secured creditor (whether arising by contract, applicable Law or otherwise) with respect to any collateral security, and/or may proceed to protect and enforce its or Licensee's rights by suit in equity, action at law or other appropriate proceeding, whether for monetary damages or any form of equitable relief (including, without limitation, any temporary restraining order, preliminary injunction, permanent injunction and specific performance of any covenant or agreement contained in this Guaranty and Commitment or the License Documents or any instrument pursuant to which any of the Obligations are evidenced, including as permitted by applicable Law the obtaining of the appointment of a receiver) and, if any amount shall have become due, by declaration or otherwise, may proceed to enforce the payment thereof or any other legal or equitable right of TDSF or Licensee. In the case of any action or suit by TDSF for equitable relief, the Obligors and any Affiliate Guarantors acknowledge and agree that money damages may not be an adequate remedy and that, in such action, TDSF may, in its sole discretion, apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, a permanent injunction, specific performance or other form of equitable relief (without the posting of any bond or other security) as such court may deem just and proper in order to enforce the applicable provision of this Guaranty and Commitment or prevent any violation hereof and, to the extent permitted under applicable Law, the Obligors and any Affiliate Guarantors hereby waive any objection to the imposition of such relief in any such equitable suit or action. Any such equitable relief granted in any such equitable suit or action shall not be exclusive and TDSF shall also be entitled to seek and enforce any other right or remedy available to it, including money damages. Notwithstanding the foregoing provisions of this Section 6(iii), in no event shall the Obligors or any Affiliate Guarantors be required to pay any money damages in respect of the Guaranteed Obligations to the extent that such money damages, together with all other Guaranteed Obligations paid by the Obligors and any Affiliate Guarantors hereunder, would exceed the Guaranty Amount.

**Section 7. Subrogation; Subordination.**

(a) Until the final payment and performance in full of all of the Guaranteed Obligations, each Obligor and any Affiliate Guarantor hereby agree not to exercise and hereby waives any rights against Licensee and/or any other Obligor or Affiliate Guarantor arising as a result of payment by any Obligor or any Affiliate Guarantor hereunder, by way of subrogation, reimbursement, restitution, contribution or otherwise, and will not prove any claim in competition with TDSF or Licensee in respect of any payment hereunder in any bankruptcy, insolvency or reorganization case or proceedings of any nature; no Obligor or Affiliate Guarantor will claim any setoff, recoupment or counterclaim against any other Obligor or Affiliate Guarantor or Licensee in respect of any liability of any Obligor or Affiliate Guarantor to any other Obligor or Affiliate Guarantor or to Licensee; and each Obligor and Affiliate Guarantor (if any) waive any benefit of and any right to participate in any collateral security that may be held by TDSF or Licensee.

(b) The payment of any amounts due with respect to any Indebtedness of Licensee now or hereafter owed to the Obligors and any Affiliate Guarantors or by any Obligor or Affiliate Guarantor to any other Obligor or Affiliate Guarantor is hereby subordinated to the prior payment in full of all of the Obligations to the extent and with the effect provided in this Section 7(b). The Obligors and any Affiliate Guarantors agree that, after the occurrence of any default in the payment or performance of any of the Obligations, no Obligor or Affiliate Guarantor will demand, sue for or otherwise attempt to collect any such Indebtedness of any other Obligor or Affiliate Guarantor or Licensee to such Obligor or Affiliate Guarantor until all of the Obligations shall have been paid in full. If, notwithstanding the foregoing sentence, any Obligor or Affiliate Guarantor shall collect, enforce or receive any amounts in respect of such Indebtedness while any Obligations are still outstanding and any default in the payment or performance thereof is continuing, such amounts shall be collected, enforced and received by such Obligor or Affiliate Guarantor as trustee for TDSF and Licensee and be paid over to TDSF or TDS USA, as applicable, on account of the Obligations without affecting in any manner the liability of the Obligors and any Affiliate Guarantors under the other provisions of this Guaranty and Commitment.

(c) The provisions of this Section 7 shall be supplemental to and not in derogation of any rights and remedies of TDSF or Licensee under any separate subordination agreement that TDSF or Licensee may at any time and from time to time enter into with the Obligors and/or any Affiliate Guarantors for the benefit of TDSF or Licensee.

**Section 8. Security; Setoff**. Each Obligor and Affiliate Guarantor (if any) hereby grants to TDSF and Licensee, as security for the full and punctual payment and performance of all of the Obligations, a continuing lien on and security interest in all securities or other property belonging to such Obligor or Affiliate Guarantor now or hereafter held by TDSF or Licensee. Regardless of the adequacy of any collateral security or other means of obtaining payment of any of the Obligations, TDSF and Licensee are hereby authorized at any time and from time to time, without notice to the Obligors or any Affiliate Guarantors (any such notice being expressly waived by the Obligors and any Affiliate Guarantors) and to the fullest extent permitted by Law, to set off any funds of any Obligor or any Affiliate Guarantors held by TDSF or Licensee against the Obligations, whether or not TDSF or Licensee shall have made any demand under this Guaranty and Commitment and although such Obligations may be contingent or unmatured.

**Section 9. Further Assurances; Expenses**. Each Obligor and Affiliate Guarantor (if any) agrees that it will from time to time, at the request of TDSF, execute any and all further documents or instruments and take such additional actions as TDSF may

deem reasonably necessary or desirable to give full effect to this Guaranty and Commitment and to perfect and preserve the rights and powers of TDSF and Licensee hereunder. Each Obligor and Affiliate Guarantor (if any) acknowledges and confirms that such Obligor or Affiliate Guarantor itself has established its own adequate means of obtaining from Licensee on a continuing basis all information desired by each Obligor or Affiliate Guarantor concerning the financial condition of Licensee and that such Obligor or Affiliate Guarantor will look to Licensee and not to TDSF in order for such Obligor or Affiliate Guarantor to keep adequately informed of changes in Licensee's financial condition. The Obligors and any Affiliate Guarantors shall be solely responsible for all costs and expenses arising from the Obligations and/or the performance of their obligations hereunder.

**Section 10. Termination; Reinstatement**. This Guaranty and Commitment shall remain in full force and effect until the Obligations have been fully and indefeasibly paid in full, notwithstanding any intermediate or temporary payment or settlement of the whole or any part of the Obligations. In the event that any Obligor or Affiliate Guarantor gives TDSF notice of its intention to discontinue this Guaranty and Commitment, such notice (i) shall not be effective unless it is given in accordance with Section 13 hereof and (ii) shall, if not rescinded within ten (10) Business Days, result in the occurrence of an Event of Default under Section 6(d) hereof. In no event (notwithstanding the additional rights of TDSF and Licensee upon the occurrence of an Event of Default or any actions taken by either TDSF or Licensee to enforce any such rights or otherwise to protect its interests hereunder) shall any such notice impair or otherwise affect any rights of TDSF or Licensee hereunder in any manner whatsoever, including, without limitation, the rights set forth in Sections 5, 6 and 7, with respect to any Obligations incurred or accrued prior to such notice or any Obligations incurred or accrued pursuant to any contract or commitment in existence prior to such notice, including, without limitation, the maximum amount of the Funding Commitment and the Guaranteed Obligations for the Initial Term and any Renewal Term that has commenced prior to such notice. This Guaranty and Commitment shall continue to be effective or be reinstated, notwithstanding any such notice or any other event, if at any time any payment made or value received with respect to any Obligation is rescinded or must otherwise be returned by TDSF or Licensee upon the insolvency, bankruptcy or reorganization of Licensee, any Obligor or any Affiliate Guarantor, or otherwise, all as though such payment had not been made or such value had not been received.

**Section 11. Successors and Assigns**. Except in connection with a Guaranty Assumption in accordance with, and subject to the limitations set forth in, the License Agreement, none of the Obligors or Affiliate Guarantors shall Transfer this Guaranty and Commitment, any of the Obligations or any of their other obligations hereunder. TDSF may Transfer this Guaranty and Commitment, any of the License Documents and/or any other agreement or note held by TDSF evidencing, securing or otherwise executed in connection with the Obligations to any other Person, and such other Person shall thereupon become vested, to the extent set forth in the agreement evidencing such assignment or transfer, with all the rights in respect thereof granted to TDSF herein, except to the extent prohibited by the applicable License Document. This Guaranty and Commitment shall be binding upon the Obligors, any Affiliate Guarantors and their respective permitted successors, transferees and assigns, and shall inure to the benefit of TDSF, Licensee and their respective successors, transferees and assigns permitted or contemplated by the License Agreement.

**Section 12. Amendments and Waivers**. No provision of this Guaranty and Commitment may be modified, supplemented or amended except by a written instrument duly executed by each of the Obligors, TDSF and Licensee. Any such modifications, supplements or amendments shall not require additional consideration to be effective. No release, discharge or waiver of, nor any consent to any departure by the Obligors or any Affiliate Guarantors from, any provision hereof shall be enforceable against or binding upon TDSF or Licensee unless in writing and executed by a duly authorized officer of each of TDSF and Licensee. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Guaranty and Commitment, shall be deemed a waiver of any rights or remedies that TDSF or Licensee may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

**Section 13. Notices**. Unless otherwise specified herein, all notices, requests, demands, consents and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, or upon delivery when sent by express mail, courier or other recognized overnight mail or next day delivery service, charges prepaid, or three (3) Business Days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited with a public telegraph company for immediate transmittal, charges prepaid, or when sent by facsimile, with a confirmation copy sent by recognized overnight mail or next day delivery, charges prepaid, addressed (i) in the case of TDSF, to TDSF at the addresses or facsimile numbers for notices to TDSF set forth in Section 21.5 (Notices) of the License Agreement, (ii) in the case of Licensee, to Licensee at the addresses or facsimile numbers for notices to Licensee set forth in Section 21.5 (Notices) of the License Agreement, (iii) in the case of the Obligors or Affiliate Guarantors, to the Obligors and any Affiliate Guarantors as follows: The Children's Place Retail Stores, Inc., 915 Secaucus Road, Secaucus, New Jersey 08540, Facsimile: (201) 558-2837, Attention: Chief Financial Officer, with copies (which shall not constitute notice) to The Children's Place Retail Stores, Inc., 915 Secaucus Road, Secaucus, New Jersey 08540, Facsimile: (201) 558-2825, Attention: General Counsel, and to Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038, Facsimile (212) 806-6006, Attention: Jeffrey S. Lowenthal, Esq., or (iv) to such other address or facsimile number as may be designated by any party hereto by written notice to the others in accordance with this Section 13.

**Section 14. Entire Agreement**. The provisions contained in this Guaranty and Commitment, the Acquisition Agreement, the License Agreement, the other License Documents and/or any other documents, agreements and instruments contemplated hereby or thereby or to be executed and delivered in connection herewith or therewith or pursuant hereto or thereto (including in each case any annexes, exhibits and schedules thereto) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede and replace any and all previous agreements among the parties, whether written or oral, with respect to such subject matter. No statement or inducement with respect to the subject matter hereof by any party hereto or by any

agent or representative of any party hereto that is not contained in this Guaranty and Commitment, the Acquisition Agreement, the License Agreement, the other License Documents and/or any other documents, agreements and instruments contemplated hereby or thereby or to be executed and delivered in connection herewith or therewith or pursuant hereto or thereto shall be valid or binding between the parties.

**Section 15. Joint and Several Liability of the Obligors; Joint and Several Liability of the Affiliate Guarantors; Joinder**. Notwithstanding anything to the contrary contained herein, TCP and Licensee Parent shall be jointly and severally liable for all of the Obligations and all other liabilities, duties and obligations of TCP, Licensee Parent, the Obligors and/or any Affiliate Guarantors hereunder without regard to (i) the party or parties to whom this Guaranty and Commitment allocates any such Obligation or other liability, duty or obligation or (ii) the party or parties from whose action, omission, breach or violation any such Obligation or other liability, duty or obligation arises or on whose action, omission, breach or violation any such Obligation or other liability, duty or obligation is based. Notwithstanding anything to the contrary contained herein, all Affiliate Guarantors (if any) shall be jointly and severally liable under their guarantees of all of the Obligations and all other liabilities, duties and obligations of TCP, Licensee Parent, the Obligors and/or any other Affiliate Guarantors hereunder without regard to (i) the party or parties to whom this Guaranty and Commitment allocates any such Obligation or other liability, duty or obligation or (ii) the party or parties from whose action, omission, breach or violation any such Obligation or other liability, duty or obligation arises or on whose action, omission, breach or violation any such Obligation or other liability, duty or obligation is based. Each Obligor and Affiliate Guarantor (if any) acknowledges and agrees that TDSF and/or its Affiliates shall be entitled to join any or all Obligors and Affiliate Guarantors as parties to any suit or action by TDSF and/or its Affiliates against Licensee and/or any of its Affiliates under the License Documents, whether such suit or action seeks monetary damages, equitable relief or any other right or remedy available at law, in equity or otherwise and whether such suit or action is resolved through the Arbitration Procedures or a legal proceeding submitted for trial pursuant to the terms of the applicable License Document, and each Obligor and any Affiliate Guarantor hereby waive any objection that it may now or hereafter have to such joinder.

**Section 16. Governing Law; Cumulative Remedies**. Except to the extent that certain matters may be governed by federal law, this Guaranty and Commitment shall be deemed to have been entered into in the State of California and shall be interpreted and construed in accordance with the laws of the State of California applicable to agreements executed and to be performed therein by each party hereto. The rights and remedies herein conferred upon TDSF or Licensee are cumulative and in addition to any other remedies hereunder, under the License Documents or any other agreement, provided by Law or otherwise available to TDSF or Licensee at law, in equity or otherwise, and this Guaranty and Commitment shall be in addition to any other guaranty of or collateral security for any of the Obligations.

**Section 17. Dispute Resolution; Consent to Jurisdiction; Waiver of Jury Trial**. Each Obligor and Affiliate Guarantor (if any) acknowledges and agrees that (i) any suit or action by any Obligor or Affiliate Guarantor with respect to disputes arising under this Guaranty and Commitment shall be resolved through the dispute resolution procedures set forth in Section 21.23 (Arbitration Procedures) of the License Agreement (the "**Arbitration Procedures**"), which Arbitration Procedures are hereby incorporated into this Guaranty and Commitment as if set forth in full herein with the exception that references to "Licensee" therein shall be deemed to be references to the Obligors and any Affiliate Guarantors and references to the "Agreement" shall be deemed to be references to this Guaranty and Commitment for purposes of this Guaranty and Commitment, and (ii) in any suit or action to protect and/or enforce TDSF's and/or Licensee's rights under this Guaranty and Commitment or any other suit or action by TDSF with respect to disputes arising under this Guaranty and Commitment, TDSF shall be entitled, in its sole discretion, to seek recourse and remedy through either the Arbitration Procedures or a legal proceeding submitted for trial before the Superior Court in and for the County of Los Angeles, State of California, or the United States District Court for the Central District of California, or if neither such court shall have jurisdiction, then before any other court sitting in Los Angeles County, California, having subject matter jurisdiction. Each Obligor and Affiliate Guarantor (if any) consents to the exclusive jurisdiction of such courts and to service of process outside of the State of California pursuant to the requirement of any such court in any matter subject to it and each Obligor and Affiliate Guarantor (if any) hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit was brought in an inconvenient court. **EACH OBLIGOR AND AFFILIATE GUARANTOR (IF ANY) HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS GUARANTY AND COMMITMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY OF SUCH RIGHTS OR OBLIGATIONS.**

**Section 18. Limitation of Liability**. Except as prohibited by Law, each Obligor and Affiliate Guarantor (if any) hereby waives any right that it may have to claim or recover in any dispute arising under this Guaranty and Commitment any punitive, exemplary, consequential, incidental, indirect, special or speculative damages (including loss of profits). The Obligors and any Affiliate Guarantors (a) certify that neither TDSF nor any Representative of TDSF has represented, expressly or otherwise, that TDSF would not, in the event of any such dispute, seek to enforce the foregoing waivers and (b) acknowledge that, in entering into the License Documents, TDSF is relying upon, among other things, the waivers and certifications contained in this Section 18.

**Section 19. Miscellaneous**. Except to the extent such provisions would conflict with the express provisions hereof or be inapplicable hereto, the provisions contained in Sections 17 (Public Disclosure; Confidentiality), 21.7 (Joint Venture/Partnership Disclaimer), 21.8 (Accord and Satisfaction), 21.9 (Relationship of Parties), 21.10 (Effect of Headings), 21.11 (Construction), 21.13 (Severability), 21.15 (Counterparts; Facsimile Signatures), 21.17 (No Third Party Beneficiaries), 21.19 (Conflicts of Interest), 21.20 (Interest) and 21.27 (Rules of Interpretation) of the License Agreement are hereby incorporated into this Guaranty and Commitment as if set forth in full herein, with the exception that references to "Licensee" therein shall be deemed to be references to the Obligors and Affiliate Guarantors (if any) and references to the "Agreement" shall be deemed to be references to this Guaranty and Commitment for purposes of this Guaranty and Commitment.

**IN WITNESS WHEREOF**, the Obligors have caused this Guaranty and Commitment to be executed and delivered as of the date first above written.

THE CHILDREN'S PLACE RETAIL STORES, INC.

By: /s/ Seth Udasin
Name: Seth Udasin
Title: Vice President and Treasurer

HOOP HOLDINGS, LLC

By: /s/ Seth Udasin
Name: Seth Udasin
Title: Treasurer

ACKNOWLEDGED AND AGREED

TDS FRANCHISING, LLC
a California limited liability company

By: /s/ David K. Thompson
Name: David K. Thompson
Title: Senior Vice President

By: /s/ James M. Kapenstein
Name: James M. Kapenstein
Title: Vice President

THE DISNEY STORE, LLC
a California limited liability company

By: /s/ Steven Balasiano
Name: Steven Balasiano
Title: Senior Vice President

By: /s/ Seth Udasin
Name: Seth Udasin
Title: Treasurer

THE DISNEY STORE (CANADA) LTD.

By: /s/ Steven Balasiano
Name: Steven Balasiano
Title: Senior Vice President

**LOAN AND SECURITY AGREEMENT**

WELLS FARGO RETAIL FINANCE, LLC

Agent for

The Lenders Referenced Herein

CONGRESS FINANCIAL CORPORATION (NEW ENGLAND),
as Documentation Agent

and

LASALLE RETAIL FINANCE, A DIVISION OF LASALLE BUSINESS CREDIT, LLC
as Co-Agent

THE DISNEY STORE, LLC

The Lead Borrower

For:

THE DISNEY STORE, LLC

HOOP RETAIL STORES, LLC

The Borrowers

HOOP CANADA HOLDINGS, INC.

The Guarantor

HOOP CANADA, INC.
THE DISNEY STORE (CANADA) LTD.

The Secondary Guarantors

November 21, 2004

TABLE OF CONTENTS

**EXHIBITS**



LOAN AND SECURITY AGREEMENT Wells Fargo Retail Finance, LLC, Agent

November 21, 2004

THIS AGREEMENT is made between

Wells Fargo Retail Finance, LLC (in such capacity, herein the "**Agent**"), a Delaware limited liability company with offices at One Boston Place - - 18th Floor, Boston, Massachusetts 02109, as agent for the ratable benefit of the "**Revolving Credit Lenders**", who are, at present, those financial institutions identified on the signature pages of this Agreement and who in the future are those Persons (if any) who become "Revolving Credit Lenders" in accordance with the provisions of Article 17, below;

and

The Revolving Credit Lenders;

and

The Disney Store, LLC ( in such capacity, the "**Lead Borrower**"), a California limited liability company with its principal executive offices at c/o The Children's Place Retail Stores, Inc., 915 Secaucus Road, Secaucus, New Jersey 07094, as agent for the following (individually, a **"Borrower**" and collectively, the "**Borrowers**"):

The Disney Store, LLC, a California limited liability company with its principal executive offices at c/o The Children's Place Retail Stores, Inc., 915 Secaucus Road, Secaucus, New Jersey 07094; and

Hoop Retail Stores, LLC, a Delaware limited liability company with its principal executive offices at c/o The Children's Place Retail Stores, Inc., 915 Secaucus Road, Secaucus, New Jersey 07094,

in consideration of the mutual covenants contained herein and benefits to be derived herefrom,

WITNESSETH:

**Article 1 - Definitions:**

As used herein, the following terms have the following meanings or are defined in the section of this Agreement so indicated:

"**Acceleration**": The making of demand or declaration that any indebtedness, not otherwise due and payable, is due and payable. Derivations of the word "Acceleration" (such as "Accelerate") are used with like meaning in this Agreement.

"**Acceleration Notice**": Written notice as follows:

(a) From the Agent to the Revolving Credit Lenders, as provided in Section 14.1(a).

(b) From the SuperMajority Lenders to the Agent, as provided in Section 14.1(b).

"**Account Debtor**": Has the meaning given that term in the UCC.

"**Accounts**" and "**Accounts Receivable**" include, without limitation, "accounts" as defined in the UCC, and also all: accounts, accounts receivable, receivables, and rights to payment (whether or not earned by performance) for: property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; services rendered or to be rendered; a policy of insurance issued or to be issued; a secondary obligation incurred or to be incurred; energy provided or to be provided; for the use or hire of a vessel; arising out of the use of a credit or charge card or information contained on or used with that card; winnings in a lottery or other game of chance; and also all Inventory which gave rise thereto, and all rights associated with such Inventory, including the right of stoppage in transit; all reclaimed, returned, rejected or repossessed Inventory (if any) the sale of which gave rise to any Account.

"**ACH**": Automated clearing house.

"**Acquisition Agreement**": That certain Acquisition Agreement dated as of October 19, 2004 entered into by and among Affiliates of the Borrowers, The Children's Place Retail Stores, Inc., as guarantor, and certain of the Walt Disney Companies.

"**Affiliate**": The following:

(a) With respect to any two Persons, a relationship in which (i) one holds, directly or indirectly, not less than Twenty Five Percent (25%) of the capital stock, beneficial interests, partnership interests, or other equity interests of the other; or (ii) one has, directly or indirectly, the right, under ordinary circumstances, to vote for the election of a majority of the directors (or other body or Person who has those powers customarily vested in a board of directors of a corporation); or (iii) not less than Twenty Five Percent (25%) of their respective ownership is directly or indirectly held by the same third Person.

(b) Any Person which: is a parent, brother-sister, subsidiary, or affiliate, of a Borrower; could have such enterprise's tax returns or financial statements consolidated with that Borrower's; could be a member of the same controlled group of corporations (within the meaning of Section 1563(a)(1), (2) and (3) of the Internal Revenue Code of 1986, as amended from time to time) of which any Borrower is a member; or controls or is controlled by any Borrower.

"**Agent**": Is referred to in the Preamble.

"**Agent's Cover**": Defined in Section 13.2(c)(i).

"**Agent's Rights and Remedies**": Is defined in Section 11.7.

"**Applicable Law**": As to any Person: (i) All statutes, rules, regulations, orders, or other requirements having the

force of law and (ii) all court orders and injunctions, arbitrator's decisions, and/or similar rulings, in each instance ((i) and (ii)) of or by any federal, state, municipal, and other governmental authority, or court, tribunal, panel, or other body which has or claims jurisdiction over such Person, or any property of such Person, or of any other Person for whose conduct such Person would be responsible.

"**Assigning Revolving Credit Lender**": Defined in Section 17.1(a).

"**Assignment and Acceptance**": Defined in Section 17.2.

"**Availability**": The result of the following:

(i) The lesser of

(A) The Revolving Credit Ceiling

or

(B) The Borrowing Base

Minus

(ii) The aggregate unpaid balance of the Loan Account.

Minus

(iii) The aggregate undrawn Stated Amount of all then outstanding L/C's.

Minus

(iv) The aggregate of the Availability Reserves

Minus

(v) The Minimum Reserve.

"**Availability Reserves**": Such reserves as the Agent from time to time determines in the Agent's discretion as being appropriate to reflect the impediments to the Agent's ability to realize upon the Collateral. Without limiting the generality of the foregoing, Availability Reserves may include (but are not limited to) reserves based on the following:

(i) Rent (but only if a landlord's waiver, acceptable to the Agent, has not been received by the Agent with respect to each of the Borrowers' retail locations in Virginia, Pennsylvania, and Washington) in an amount equal to one month's rent for each such location .

(ii) Customer Credit Liabilities.

(iii) Bank Product Reserves.

(iv) Taxes and other governmental charges, including, ad valorem, personal property, and other taxes which might have priority over the Collateral Interests of the Agent in the Collateral.

(v) L/C Landing Costs.

(vi) Royalty payments due to the Walt Disney Companies under the Disney License Agreement, initially set at an amount equal to approximately One (1) month's royalty payment.

**"Average Excess Availability"**: Means, for the subject period, the aggregate of the amount of Availability on each day in the period, divided by the number of days in the subject period.

"**Bank Product Agreements**" means those certain cash management service agreements entered into from time to time by the Borrower in connection with any of the Bank Products.

"**Bank Product Obligations**" means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by the Borrower to the Lenders, the Agent, Wells Fargo Bank, N.A., or any of their respective Affiliates pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all such amounts that the Borrower is obligated to reimburse to the Agent, the Lenders or any of their respective Affiliates as a result of the Agent purchasing participations or executing indemnities or reimbursement obligations with respect to the Bank Products provided to the Borrower pursuant to the Bank Product Agreements.

"**Bank Products**" means any service or facility extended to the Borrower by the Lenders, the Agent, Wells Fargo Bank, N. A. or any of their respective Affiliates: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) purchase cards, (e) ACH Transactions, (f) cash management, including controlled disbursement, accounts or services, or (g) hedge agreements.

"**Bank Product Reserves**" means, as of any date of determination, the amount of reserves that any Lender or the Agent has established (based upon Wells Fargo Bank, N. A.'s or its Affiliate's, or any other Affiliate's of such Lender or the Agent, as applicable, reasonable determination of the credit exposure in respect of then extant Bank Products) for Bank Products then provided or outstanding.

"**Bankruptcy Code**": Title 11, U.S.C., as amended from time to time.

"**Blocked Account**": Any DDA into which the contents of any other DDA is transferred.

"**Blocked Account Agreement**": An Agreement, in form satisfactory to the Agent, which Agreement recognizes the Agent's Collateral Interest in the contents of the DDA which is the subject of such Agreement and agrees that such contents shall be transferred only to the Blocked Account or as otherwise instructed by the Agent.

"**Borrower**" and "**Borrowers**": Is defined in the Preamble.

"**Borrowing Base**": The aggregate of the following:

> The Inventory Advance Rate times the Cost of the Borrowers' Eligible Inventory (other than Eligible L/C Inventory and Eligible In-transit Inventory, and net of Inventory Reserves), but in no event greater than Eighty-five percent (85%) (or Ninety percent (90%) during the Seasonal Period) of the NRLV of the Borrowers' Eligible Inventory (net of Inventory Reserves)
>
> Plus
>
> The Inventory Advance Rate times the Cost of the Borrowers' Eligible In-transit Inventory (net of Inventory Reserves), but in no event greater than Eighty-five percent (85%) (or Ninety percent (90%) during the Seasonal Period) of the NRLV of the Borrowers' Eligible In-transit Inventory (net of Inventory Reserves); (in no event shall the advances against Eligible In-transit Inventory ever exceed (i) $10,000,000.00 during the months of September and October each year (and during November, 2004), or (ii) $5,000,000.00 at all other times)
>
> Plus
>
> The Inventory Advance Rate times the Cost of the Borrowers' Eligible L/C Inventory (net of Inventory Reserves), but in no event greater than Eighty-five percent (85%) of the NRLV of the Borrowers' Eligible L/C Inventory (net of Inventory Reserves).
>
> Plus
>
> The face amount of Eligible Credit Card Receivables multiplied by Ninety percent (90%).

"**Borrowing Base Certificate**": Is defined in Section 5.4.

"**Business Day**": Any day other than (a) a Saturday or Sunday; (b) any day on which banks in Boston, Massachusetts, generally are not open to the general public for the purpose of conducting commercial banking business; or (c) a day on which the principal office of the Agent is not open to the general public to conduct business.

"**Business Plan**": The Borrowers' business plan annexed hereto as EXHIBIT 5.11(b) and any revision, amendment, or update of such business plan to which the Lender has provided its written sign-off.

"**Capital Expenditures**": The expenditure of funds or the incurrence of liabilities which may be capitalized in accordance with GAAP.

"**Capital Lease**": Any lease which may be capitalized in accordance with GAAP.

"**Change in Control**": The occurrence of any of the following:

> (a) The acquisition, by any group of persons (within the meaning of the Securities Exchange Act of 1934, as amended) or by any Person, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission) of 20% or more of the issued and outstanding capital stock of the Lead Borrower having the right, under ordinary circumstances, to vote for the election of directors of the Lead Borrower.

(b) The failure at any time of directors designated by The Children's Place Retail Stores, Inc. to constitute at least a majority of the members of the board of directors of the Lead Borrower.

(c) Any failure of the Lead Borrower to own, beneficially and of record, 100% of the capital stock of all other Borrowers.

"**Chattel Paper**": Has the meaning given that term in the UCC.

"**Closing Date**": November 21, 2004.

"**Collateral**": Is defined in Section 8.1.

"**Collateral Interest**": Any interest in property to secure an obligation, including, without limitation, a security interest, mortgage, and deed of trust.

"**Consent**": Actual consent given by the Revolving Credit Lender from whom such consent is sought; or the passage of Twelve (12) Business Days from receipt of written notice to a Revolving Credit Lender from the Agent of a proposed course of action to be followed by the Agent without such Revolving Credit Lender's giving the Agent written notice of that Revolving Credit Lender's objection to such course of action, provided that the Agent may rely on such passage of time as consent by a Revolving Credit Lender only if such written notice states that consent will be deemed effective if no objection is received within such time period.

"**Consolidated**": When used to modify a financial term, test, statement, or report, refers to 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 the Borrowers.

"**Cost**": The lower of (a) or (b), where:

(a) is the calculated cost of purchases, based upon the Borrowers' accounting practices, known to the Agent, which practices are in effect on the date on which this Agreement was executed as such calculated cost is determined from: invoices received by the Borrowers; the Borrowers' purchase journal; or the Borrowers' stock ledger.

(b) is the cost equivalent of the lowest ticketed or promoted price at which the subject Inventory is offered to the public, after all mark-downs (whether or not such price is then reflected on the Borrowers' accounting system), which cost equivalent is determined in accordance with the retail method of accounting, reflecting the Borrowers' historic business practices.

("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).

"**Costs of Collection**": Includes, without limitation, all attorneys' reasonable fees and reasonable out-of-pocket expenses incurred by the Agent's attorneys, and all reasonable out-of-pocket costs incurred by the Agent in the administration of the Liabilities and/or the Loan Documents, including, without limitation, reasonable costs and expenses associated with travel on behalf of the Agent, where such costs and expenses are directly or indirectly related to or in respect of the Agent's: administration and management of the Liabilities; negotiation, documentation, and amendment of any Loan Document; or efforts to preserve, protect, collect, or enforce the Collateral, the Liabilities, and/or the Agent's Rights and Remedies and/or any of the rights and remedies of the Agent against or in respect of any guarantor or other person liable in respect of the Liabilities (whether or not suit is instituted in connection with such efforts). "Costs of Collection" also includes the reasonable fees and expenses of Lenders' Special Counsel. The Costs of Collection are Liabilities, and at the Agent's option may bear interest at the then effective Prime Margin Rate.

"**Customer Credit Liability**": Gift certificates, customer deposits, merchandise credits, layaway obligations, frequent shopping programs, and similar liabilities of any Borrower to its retail customers and prospective customers.

"**DDA**": Any checking or other demand daily depository account maintained by any Borrower other than any Exempt DDA.

"**Delinquent Revolving Credit Lender**": Defined in Section 13.2(c).

"**Deposit Account**": Has the meaning given that term in the UCC and also includes all demand, time, savings, passbook, or similar accounts maintained with a bank.

"**Designation**": means the Designation of Secured Lender Under License Agreement dated as of November 21, 2004, made by the Licensee and TDSF (as such terms are defined in the Disney License Agreement) in favor of the Agent and the Lenders, and accepted by the Agent on behalf of itself and the Lenders.

“**Disney License Agreement**”: Means that certain License and Conduct of Business Agreement dated November 21, 2004 entered into by and among the Borrowers and TDS Franchising, LLC.

"**Documents**": Has the meaning given that term in the UCC.

"**Documents of Title**": Has the meaning given that term in the UCC.

"**EBITDA**": The Borrowers' Consolidated earnings before interest, taxes, depreciation, and amortization, each as determined in accordance with GAAP.

“**Eligible Assignee**”: A bank, insurance company, or company engaged in the business of making commercial loans having a combined capital and surplus in excess of $100 Million or any Affiliate of any Revolving Credit Lender, or any Person to whom a Revolving Credit Lender assigns its rights and obligations under this Agreement as part of a programmed assignment and transfer of such Revolving Credit Lender’s rights in and to a material portion of such Revolving Credit Lender’s portfolio of asset based credit facilities.

“**Eligible Credit Card Receivables**”: Under Five (5) business day accounts due on a non-recourse basis from major credit card processors (which, if due on account of a private label credit card program, are deemed in the discretion of the Agent to be eligible).

“**Eligible In-transit Inventory**”: Inventory (without duplication as to Eligible Inventory or Eligible L/C Inventory), which previously had been Eligible L/C Inventory, but with respect to which the documentary L/C has already been drawn upon by the beneficiary thereof, but with respect to which the Borrowers have not yet received delivery and possession.

“**Eligible Inventory**”: All of the following: Such of the Borrowers’ Inventory (including Eligible L/C Inventory and Eligible In-transit Inventory, but excluding other in-transit inventory which fails to meet the standards for Eligible L/C Inventory or Eligible In-transit Inventory), at such locations, and of such types, character, qualities and quantities, as the Agent in its discretion from time to time determines to be acceptable for borrowing, as to which Inventory, the Agent has a perfected security interest which is prior and superior to all security interests, claims, and Encumbrances (other than Permitted Encumbrances).

“**Eligible L/C Inventory**”: Inventory (without duplication as to Eligible Inventory or Eligible In-transit Inventory), the purchase of which is supported by a documentary L/C then having an initial expiry of One hundred twenty (120) or fewer days, provided that

(a) Such Inventory is of such types, character, qualities and quantities (net of Inventory Reserves) as the Agent in its discretion from time to time determines to be eligible for borrowing; and

(b) If required by the Agent, at the option of the Agent from time to time, in the Agent's sole and exclusive discretion, the documentary L/C supporting such purchase names the Agent as consignee of the subject Inventory and the Agent has control over the documents which evidence ownership of the subject Inventory (such as by the providing to the Agent of a Customs Brokers Agreement in form reasonably satisfactory to the Agent).

**"Employee Benefit Plan"**: As defined in ERISA.

**"Encumbrance"**: Each of the following:

(a) A Collateral Interest or agreement to create or grant a Collateral Interest; the interest of a lessor under a Capital Lease; conditional sale or other title retention agreement; sale of accounts receivable or chattel paper; or other arrangement pursuant to which any Person is entitled to any preference or priority with respect to the property or assets of another Person or the income or profits of such other Person; each of the foregoing whether consensual or non-consensual and whether arising by way of agreement, operation of law, legal process or otherwise.

(b) The filing of any financing statement under the UCC or comparable law of any jurisdiction.

“**End Date**”: The date upon which all of the following conditions are met: (a) all payment Liabilities described in 19.2(a) have been paid in full and (b) all obligations of any Revolving Credit Lender to make loans and advances and to provide other financial accommodations to the Borrowers hereunder shall have been irrevocably terminated and (c) those arrangements concerning L/C’s, Bank Products, and Bank Product Obligations which are described in Section 19.2(b) have been made.

**"Environmental Laws"**: All of the following:

(a) Applicable Law which regulates or relates to, or imposes any standard of conduct or

liability on account of or in respect to environmental protection matters, including, without limitation, Hazardous Materials, as are now or hereafter in effect.

(b) The common law relating to damage to Persons or property from Hazardous Materials.

"**Equipment**": Includes, without limitation, "equipment" as defined in the UCC, and also all furniture, store fixtures, motor vehicles, rolling stock, machinery, office equipment, plant equipment, tools, dies, molds, and other goods, property, and assets which are used and/or were purchased for use in the operation or furtherance of a Borrowers' business, and any and all accessions or additions thereto, and substitutions therefor.

"**ERISA**": The Employee Retirement Income Security Act of 1974, as amended.

"**ERISA Affiliate**": Any Person which is under common control with a Borrower within the meaning of Section 4001 of ERISA or is part of a group which includes any Borrower and which would be treated as a single employer under Section 414 of the Internal Revenue Code of 1986, as amended.

"**Events of Default**": Is defined in Article 10. An "Event of Default" shall be deemed to have occurred and to be continuing unless and until that Event of Default has been duly waived by the Agent.

"**Executive Agreement**": Any agreement or understanding (whether or not written) to which the Borrower is a party or by which the Borrower may be bound, which agreement or understanding relates to Executive Pay.

"**Executive Officer**": Ezra Dabah, Seth Udasin, Mario Ciampi, and Steven Balasiano, and any other Person who (without regard to title) is the successor to any of the foregoing or who exercises a substantial portion of the authority being exercised, at the execution of this Agreement, by any of the foregoing or a combination of such authority of more than one of the foregoing or who otherwise has Control of the Borrower.

"**Executive Pay**": All salary, bonuses, and other value directly or indirectly provided by or on behalf of the Borrower to or for the benefit of any Executive Officer or any Affiliate, spouse, parent, or child of any Executive Officer.

"**Exempt DDA**": A depository account maintained by any Borrower, the only contents of which may be transfers from the Operating Account and actually used solely (i) for petty cash purposes; or (ii) for payroll.

"**Fee Letter**": That certain Fee Letter dated November 21, 2004 entered into by and between the Agent and the Borrowers.

"**Financially Curable Defaults**": Is defined in Section 12.1.

"**Fiscal**": When followed by "month" or "quarter", the relevant fiscal period based on the Borrowers' fiscal year and accounting conventions (e.g. reference to "Fiscal 2004" is to the fiscal month of the Borrower's fiscal year ending in 2004). When followed by reference to a specific year, the fiscal year which ends in a month of the year to which reference is being made (e.g. if the Borrowers' fiscal year ends in January 2004 reference to that year would be to the Borrowers' "Fiscal 2004").

"**Fixtures**": Has the meaning given that term in the UCC.

"**GAAP**": Principles which are consistent with those promulgated or adopted by the Financial Accounting Standards Board and its predecessors (or successors) in effect and applicable to that accounting period in respect of which reference to GAAP is being made.

"**General Intangibles**": Includes, without limitation, the Acquisition Agreement and the Borrower's rights in, to, and under the Acquisition Agreement. General Intangibles also includes, without limitation, "general intangibles" as defined in the UCC; and also all: rights to payment for credit extended; deposits; amounts due to any Borrower; credit memoranda in favor of any Borrower; warranty claims; tax refunds and abatements; insurance refunds and premium rebates; all means and vehicles of investment or hedging, including, without limitation, options, warrants, and futures contracts; records; customer lists; telephone numbers; goodwill; causes of action; judgments; payments under any settlement or other agreement; literary rights; rights to performance; royalties; license and/or franchise fees; rights of admission; licenses; franchises; license agreements, including all rights of any Borrower to enforce same; permits, certificates of convenience and necessity, and similar rights granted by any governmental authority; patents, patent applications, patents pending, and other intellectual property; internet addresses and domain names; developmental ideas and concepts; proprietary processes; blueprints, drawings, designs, diagrams, plans, reports, and charts; catalogs; manuals; technical data; computer software programs (including the source and object codes therefor), computer records, computer software, rights of access to computer record service bureaus, service bureau computer contracts, and computer data; tapes, disks, semi-conductors chips and printouts; trade secrets rights, copyrights, mask work rights and interests, and derivative works and interests; user, technical reference, and other manuals and materials; trade names, trademarks, service marks, and all goodwill relating thereto; applications for registration of the foregoing; and all other general intangible property of any Borrower in the nature of intellectual property; proposals; cost estimates, and reproductions on paper, or otherwise, of any and all concepts or ideas, and any matter related to, or connected with, the design, development, manufacture, sale, marketing, leasing, or use of any or all property produced,

sold, or leased, by any Borrower or credit extended or services performed, by any Borrower, whether intended for an individual customer or the general business of any Borrower, or used or useful in connection with research by any Borrower. "General Intangibles" shall include the rights of Borrower under the Disney License *Agreement; provided, however*, that notwithstanding the foregoing or any other provision of this Agreement or any other Loan Document, in no event shall the Agent or the Revolving Credit Lenders have any right whatsoever to access, use, apply, assign, convey, transfer, sublicense, copy, infringe, enforce, exercise rights under, or disclose to any Person, for any purpose, in any manner, directly or indirectly, pursuant to a power of attorney, in their own or the Borrower's name, or otherwise, any interest in the Disney License Agreement, any rights of any party thereto (including without limitation any right to operate or manage the Business or any part thereof), or any Disney Properties or Licensed Materials (as such terms are defined in the Disney License Agreement), and *provided, further,* that none of the Disney Companies shall have any obligations, or owe any performance or any duty of any kind whatsoever, to the Agent or the Revolving Credit Lenders, in each case, except to the limited extent expressly permitted by the Designation and in compliance with Section 16.5 of the Disney License Agreement.

"**Goods**": Has the meaning given that term in the UCC, and also includes all things movable when a security interest therein attaches and also all computer programs embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such manner that it customarily is considered part of the goods or (ii) by becoming the owner of the goods, a Person acquires a right to use the program in connection with the goods.

"**Guarantor(s)**": Initially, Hoop Canada Holdings, Inc., a Delaware corporation, and together with any Person who subsequently becomes obligated as a guarantor on account of the Liabilities, jointly, severally, and collectively.

"**Guarantor's Default**": The occurrence of any Event of Default with respect to any Guarantor or Secondary Guarantor, as if the Guarantor or Secondary Guarantor, as the case may be, were one of the Borrowers hereunder.

"**Hazardous Materials**": Any (a) substance which is defined or regulated as a hazardous material in or under any Environmental Law and (b) oil in any physical state.

"**Indebtedness**": All indebtedness and obligations of or assumed by any Person on account of or in respect to any of the following:

(a) In respect of money borrowed (including any indebtedness which is non-recourse to the credit of such Person but which is secured by an Encumbrance on any asset of such Person) whether or not evidenced by a promissory note, bond, debenture or other written obligation to pay money.

(b) In connection with any letter of credit or acceptance transaction (including, without limitation, the face amount of all letters of credit and acceptances issued for the account of such Person or reimbursement on account of which such Person would be obligated).

(c) In connection with the sale or discount of accounts receivable or chattel paper of such Person.

(d) On account of deposits or advances.

(e) As lessee under Capital Leases.

(f) In connection with any sale and leaseback transaction.

**"Indebtedness"** also includes:

(x) Indebtedness of others secured by an Encumbrance on any asset of such Person, whether or not such Indebtedness is assumed by such Person.

(y) Any guaranty, endorsement, suretyship or other undertaking pursuant to which that Person may be liable on account of any obligation of any third party.

(z) The Indebtedness of a partnership or joint venture for which such Person is liable as a general partner or joint venturer.

"**In Default**": Any occurrence, circumstance, or state of facts with respect to a Borrower which (a) is an Event of Default; or (b) would become an Event of Default if any requisite notice were given and/or any requisite period of time were to run and such occurrence, circumstance, or state of facts were not absolutely cured within any applicable grace period.

"**Indemnified Person**": Is defined in Section 20.13.

"**Instruments**": Has the meaning given that term in the UCC.

"**Interest Payment Date**": With reference to:

Each Libor Loan: The last day of the Interest Period relating thereto; the Termination Date; and the End Date.

Each Prime Margin Loan: The first day of each month; the Termination Date; and the End Date.

"**Interest Period**": The following:

(a) With respect to each Libor Loan: Subject to Subsection (c), below, the period commencing on the date of the making or continuation of, or conversion to, the subject Libor Loan and ending one, two, or three months thereafter, as the Lead Borrower may elect by notice (pursuant to Section 2.5) to the Agent.

(b) With respect to each Prime Margin Loan: Subject to Subsection (c), below, the period commencing on the date of the making or continuation of or conversion to such Prime Margin Loan and ending on that date (i) as of which the subject Prime Margin Loan is converted to a Libor Loan, as the Lead Borrower may elect by notice (pursuant to Section 2.5) to the Agent, or (ii) on which the subject Prime Margin Loan is paid by the Borrowers.

(c) The setting of Interest Periods is in all instances subject to the following:

(i) Any Interest Period for a Prime Margin Loan which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day.

(ii) Any Interest Period for a Libor Loan which would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day, unless that succeeding Business Day is in the next calendar month, in which event such Interest Period shall end on the last Business Day of the month during which the Interest Period ends.

(iii) Subject to Subsection (iv), below, any Interest Period applicable to a Libor Loan, which Interest Period begins on a day for which there is no numerically corresponding day in the calendar month during which such Interest Period ends, shall end on the last Business Day of the month during which that Interest Period ends.

(iv) Any Interest Period which would otherwise end after the Termination Date shall end on the Termination Date.

(v) The number of Interest Periods in effect at any one time is subject to Section 2.11(e) hereof.

"**Inventory**": Includes, without limitation, "inventory" as defined in the UCC and also all: (a) Goods which are leased by a Person as lessor; are held by a Person for sale or lease or to be furnished under a contract of service; are furnished by a Person under a contract of service; or 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 and rejected; (d) packaging, advertising, and shipping materials related to any of the foregoing; (e) all names, marks, and General Intangibles affixed or to be affixed or associated thereto; and (f) Documents and Documents of Title which represent any of the foregoing.

"**Inventory Advance Rate**": Means the following designated percentage during the corresponding specified period:

| **Calendar Period** | **Percentage** |
|---|---|
| From September 1 to December 15 each year | 76% |
| From December 16 to May 31 each year | 64% |
| From June 1 to August 31 each year | 66% |

"**Inventory Reserves**": Such Reserves as may be established from time to time by the Agent in the Agent's discretion with respect to the determination of the saleability, at retail, of the Eligible Inventory or which reflect such other factors as affect the market value of the Eligible Inventory. As of the Closing Date, the following Inventory Reserves have been established, as set forth on the Borrowing Base Certificate:

(i) Goods designated "return to vendor."

(ii) Damaged and/or defective goods.

(iii) Capitalized Inventory costs and other non-purchase price charges.

(iv) Promotional inventory items.

(v) Inventory located in Canada.

(vi) Video pre-sales.

(vii) Inventory not located at one of the Borrowers' retail locations or distribution centers as to which an appropriate collateral access agreement has been executed.

(viii) Inventory located at closed retail locations.

(ix) Inventory to be transferred to the Walt Disney Companies.

(x) Shrink.

"**Investment Property**": Has the meaning given that term in the UCC.

"**Issuer**": The issuer of any L/C.

"**L/C**": Any letter of credit, the issuance of which is procured by the Agent for the account of any Borrower and any acceptance made on account of such letter of credit.

"**L/C Landing Costs**": To the extent not included in the Stated Amount of an L/C, customs, duty, freight, and other out-of-pocket costs and expenses which will be expended to "land" the Inventory, the purchase of which is supported by such L/C.

"**Lead Borrower**": Means The Disney Store, LLC, unless and until the Permitted Mergers have been consummated, and then, Hoop Retail Stores, LLC.

"**Lease**": Any lease or other agreement, no matter how styled or structured, pursuant to which a Borrower is entitled to the use or occupancy of any space.

"**Leasehold Interest**": Any interest of a Borrower as lessee under any Lease.

"**Lenders' Special Counsel**": A single counsel, selected by the Majority Lenders following the occurrence of an Event of Default, to represent the interests of the Revolving Credit Lenders in connection with the enforcement, attempted enforcement, or preservation of any rights and remedies under this, or any other Loan Document, as well as in connection with any "workout", forbearance, or restructuring of the credit facility contemplated hereby.

"**Letter-of-Credit Right**": Has the meaning given that term in UCC and also refers to any right to payment or performance under an L/C, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

"**Liabilities**": Includes, without limitation, the following:

(a) All and each of the following, whether now existing or hereafter arising under this Agreement or under any of the other Loan Documents:

(i) Any and all direct and indirect liabilities, debts, and obligations of each Borrower to the Agent or any Revolving Credit Lender, each of every kind, nature, and description.

(ii) Each obligation to repay any loan, advance, indebtedness, note, obligation, overdraft, or amount now or hereafter owing by any Borrower to the Agent or any Revolving Credit Lender (including all future advances whether or not made pursuant to a commitment by the Agent or any Revolving Credit Lender), whether or not any of such are liquidated, unliquidated, primary, secondary, secured, unsecured, direct, indirect, absolute, contingent, or of any other type, nature, or description, or by reason of any cause of action which the Agent or any Revolving Credit Lender may hold against any Borrower.

(iii) All notes and other obligations of each Borrower now or hereafter assigned to or held by the Agent or any Revolving Credit Lender, each of every kind, nature, and description.

(iv) All interest, fees, and charges and other amounts which may be charged by the

Agent or any Revolving Credit Lender to any Borrower and/or which may be due from any Borrower to the Agent or any Revolving Credit Lender from time to time.

(v) All Bank Product Obligations.

(vi) All costs and expenses incurred or paid by the Agent or any Revolving Credit Lender in respect of any agreement between any Borrower and the Agent or any Revolving Credit Lender or instrument furnished by any Borrower to the Agent or any Revolving Credit Lender (including, without limitation, Costs of Collection, attorneys' reasonable fees, and all court and litigation costs and expenses).

(vii) Any and all covenants of each Borrower to or with the Agent or any Revolving Credit Lender and any and all obligations of each Borrower to act or to refrain from acting in accordance with any agreement between that Borrower and the Agent or any Revolving Credit Lender or instrument furnished by that Borrower to the Agent or any Revolving Credit Lender.

(viii) Each of the foregoing as if each reference to the " the Agent or any Revolving Credit Lender" were to each Affiliate of the Agent.

(b) Any and all direct or indirect liabilities, debts, and obligations of each Borrower to the Agent or any Affiliate of the Agent, each of every kind, nature, and description owing on account of any service or accommodation provided to, or for the account of any Borrower pursuant to this or any other Loan Document, including cash management services and the issuances of L/C's.

"**Libor Business Day**": Any day which is both a Business Day and a day on which the principal interbank market for Libor deposits in London in which Wells Fargo Bank, N. A. participates is open for dealings in United States Dollar deposits.

"**Libor Loan**": Any Revolving Credit Loan which bears interest at a Libor Rate.

"**Libor Margin**": The following applicable percentage, based upon the corresponding Average Excess Availability:

| Level | LIBOR Margin | Average Excess Availability |
|---|---|---|
| I | 2.00% | Greater than $20,000,000.00 |
| II | 2.25% | Less than or equal to $20,000,000.00 |

The Margin on the Closing Date shall be established at Level II and adjusted at the end of each fiscal quarter thereafter based upon the amount of Average Excess Availability.

**"Libor Offer Rate"**: That rate of interest (rounded upwards, if necessary, to the next 1/100 of 1%) determined by the Agent to be the highest prevailing rate per annum at which deposits on U.S. Dollars are offered to Wells Fargo Bank, N. A., by first-class banks in the London interbank market in which Wells Fargo Bank, N. A. participates at or about 10:00AM (Boston Time) Two (2) Libor Business Days before the first day of the Interest Period for the subject Libor Loan, for a deposit approximately in the amount of the subject loan for a period of time approximately equal to such Interest Period.

"**Libor Rate**": That per annum rate which is the aggregate of the Libor Offer Rate plus the Libor Margin except that, in the event that the Agent determines that any Revolving Credit Lender may be subject to the Reserve Percentage, the "Libor Rate" shall mean, with respect to any Libor Loans then outstanding (from the date on which that Reserve Percentage first became applicable to such loans), and with respect to all Libor Loans thereafter made, an interest rate per annum equal the sum of (a) plus (b), where:

(a) is the decimal equivalent of the following fraction:

$$\frac{\text{Libor Offer Rate}}{\text{1 minus Reserve Percentage}}$$

(b) is the applicable Libor Margin.

"**Liquidation**": The exercise, by the Agent, of those rights accorded to the Agent under the Loan Documents as a creditor of the Borrowers following and on account of the occurrence of an Event of Default looking towards the realization on the Collateral. Derivations of the word "Liquidation" (such as "Liquidate") are used with like meaning in this Agreement.

"**Loan Account**": Is defined in Section 2.8.

"**Loan Commitment**": With respect to each Revolving Credit Lender, that respective Revolving Credit Lender's Revolving Credit Dollar Commitment.

"**Loan Documents**": This Agreement and each other instrument or document from time to time executed and/or delivered in connection with the arrangements contemplated hereby or in connection with any transaction with the Agent or any Affiliate of the Agent, including, without limitation, any transaction which arises out of any cash management, depository, investment, letter of credit, interest rate protection, or equipment leasing services provided by the Agent or any Affiliate of the Agent, including any Bank Product Agreements, as each may be amended from time to time.

"**Majority Lenders**": If there are two or fewer Revolving Credit Lenders who are not Delinquent Revolving Credit Lenders:

All Revolving Credit Lenders who are not Delinquent Revolving Credit Lenders.

If there are three or more Revolving Credit Lenders who are not Delinquent Revolving Credit Lenders:

Revolving Credit Lenders (other than Delinquent Revolving Credit Lenders) holding more than 50% of the Revolving Credit Percentage Commitments (calculated without regard to any Revolving Credit Percentage Commitment of any Delinquent Revolving Credit Lender).

"**Material Accounting Change**": Any change in GAAP applicable to accounting periods subsequent to the Borrowers' fiscal year most recently completed prior to the execution of this Agreement, which change has a material effect on the Borrowers' Consolidated financial condition or operating results, as reflected on financial statements and reports prepared by or for the Borrowers, when compared with such condition or results as if such change had not taken place or where preparation of the Borrowers' statements and reports in compliance with such change results in the breach of a financial performance covenant imposed pursuant to Section 5.11 where such a breach would not have occurred if such change had not taken place or visa versa.

"**Material Adverse Change**": Any event, fact, circumstance, change in, or effect, on the business of the Borrowers, when taken as a whole, which, individually or in the aggregate or on a cumulative basis with any other circumstance, changes in, or effects on, the Borrowers or the Collateral, constitutes any of the following:

(a) A material adverse change in the business, operations, results of operations, assets, liabilities, or condition (financial or otherwise) of the Borrowers (when taken as a whole), including, without limitation, a material adverse change in the business, operations, results, assets, liabilities or condition since the date of the latest financial information supplied pursuant to this Agreement or at any time when compared to the Business Plan.

(b) The material impairment of the Borrowers' ability to perform their obligations under the Loan Documents or of the Agent's ability to enforce the Liabilities or to realize on any of the Collateral.

(c) A material adverse effect on the value of the Collateral or the amount which the Agent likely would receive (after giving consideration to delays in payment and costs of enforcement).

(d) A material impairment to the priority of the Agent's Collateral Interests in the Collateral.

"**Maturity Date**": November 21, 2007.

"**Minimum Reserve**": An amount equal to $10,000,000.00, unless increased pursuant to Exhibit 5.11(a), in which event, $12,000,000.00.

"**Nominee**": A business entity (such as a corporation or limited partnership) formed by the Agent to own or manage any Post Foreclosure Asset.

"**Non-Curable Defaults**": Is defined in Section 12.2.

"**NRLV**": Means the net recovery value (liquidation value) of Inventory expressed as a percentage of the cost of such Inventory, as determined by the Agent in its discretion based upon the most recent Inventory appraisal available to the Agent conducted by an appraiser reasonably acceptable to the Agent.

"**Operating Account**": Is defined in Section 7.1.

"**Other Defaults**": Is defined in Section12.3.

“**OverLoan**”: A loan, advance, or providing of credit support (such as the issuance of any L/C) to the extent that, immediately after its having been made, Availability is less than zero.

“**Payment Intangible**”: As defined in the UCC and also any general intangible under which the Account Debtor’s primary obligation is a monetary obligation.

"**Permitted Disposition**": None.

"**Permitted Encumbrances**": the following:

Encumbrances in favor of the Agent.

Those Encumbrances (if any) listed on **EXHIBIT 4.6**, annexed hereto.

Purchase money security interests in Equipment to secure Indebtedness otherwise permitted hereby.

"**Permitted Indebtedness**": The following:

Any Indebtedness on account of the Revolving Credit.

The Indebtedness (if any) listed on **EXHIBIT 4.7**, annexed hereto.

Indebtedness on account of Equipment acquired in compliance with the requirements of Section 4.6(c), the incurrence of which would not otherwise be prohibited by this Agreement.

"**Permitted Investment**": The following, in each instance only if subject to a prior perfected security interest in favor of the Agent to secure the Liabilities:

Indebtedness entitled to the full faith and credit of the United States.

Indebtedness which has at least the second highest rating of nationally recognized rating agency.

Indebtedness advanced by Hoop Retail Stores, LLC or The Disney Store, LLC into and for the benefit of Hoop Canada, Inc. or The Disney Store (Canada) Ltd., not to exceed $5,000,000.00 in the aggregate at any one time.

“**Permitted Mergers**”: The mergers of (i) The Disney Store, LLC with and into Hoop Retail Stores, LLC, a Delaware limited liability company, with Hoop Retail Stores, LLC as the surviving entity, and (ii) The Disney Store (Canada) Ltd. with and into Hoop Canada, Inc., a New Brunswick corporation, with Hoop Canada, Inc. as the surviving entity, as contemplated in the Acquisition Agreement, but if, and only if, contemporaneously therewith, confirmed through the execution and delivery by the Borrowers, including Hoop Retail Stores, LLC and Hoop Canada, Inc., of whatever documents, instruments, and agreements that the Agent may require, in its sole and exclusive discretion, to ratify, confirm, and reaffirm all and singular the terms and conditions of this Agreement and each of the other Loan Documents, including the continued priority and perfection of the security interest granted to the Agent and the Revolving Credit Lenders in all Collateral.

“**Person**”: Any natural person, and any corporation, limited liability company, trust, partnership, joint venture, or other enterprise or entity.

“**Post Foreclosure Asset**”: All or any part of the Collateral, ownership of which is acquired by the Agent or a Nominee on account of the “bidding in” at a disposition as part of a Liquidation or by reason of a “deed in lieu” type of transaction.

“**Prime**”: The Prime Rate announced from time to time by Wells Fargo Bank, N. A. (or any successor in interest to Wells Fargo Bank, N. A.). In the event that said bank (or any such successor) ceases to announce such a rate, “Prime” shall refer to that rate or index announced or published from time to time as the Agent, in good faith, designates as the functional equivalent to said Prime Rate. Any change in “Prime” shall be effective, for purposes of the calculation of interest due hereunder, when such change is made effective generally by the bank on whose rate or index “Prime” is being set.

**"Prime Margin Loan"**: Each Revolving Credit Loan while bearing interest at the Prime Margin Rate.

**"Prime Margin Rate"**: The aggregate of Prime plus the following applicable percentage, based upon the corresponding Average Excess Availability:

| Level | Prime Margin | Average Excess Availability |
|---|---|---|
| I | 0.25% | Greater than $20,000,000.00 |
| II | 0.25% | Less than or equal to $20,000,000.00 |

The Margin on the Closing Date shall be established at Level II and adjusted at the end of each fiscal quarter thereafter based upon the amount of Average Excess Availability.

"**Protective OverAdvances**": Revolving Credit Loans which are OverLoans, but as to which each of the following conditions is satisfied: (a) the Revolving Credit Ceiling is not exceeded; and (b) when aggregated with all other Protective OverAdvances, such Revolving Credit Loans do not aggregate more than Ten percent (10%) of the aggregate of the Borrowing Base, not to exceed $7,000,000.00; (c) any Protective OverAdvance may be outstanding for no more than Sixty (60) consecutive Business Days, (d) Protective OverAdvances may only be made up to Two (2) times in any Twelve (12) month period, and (e) such Revolving Credit Loans are made or undertaken in the Agent's discretion to protect and preserve the interests of the Revolving Credit Lenders.

"**Proceeds**": Includes, without limitation, "Proceeds" as defined in the UCC and each type of property described in Section 8.1 hereof.

"**Receipts**": All cash, cash equivalents, money, checks, credit card slips, receipts and other Proceeds from any sale of the Collateral.

"**Receivables Collateral**": That portion of the Collateral which consists of Accounts, Accounts Receivable, General Intangibles, Chattel Paper, Instruments, Documents of Title, Documents, Investment Property, Payment Intangibles, Letter-of-Credit Rights, bankers' acceptances, and all other rights to payment.

"**Register**": Is defined in Section 17.2(c).

"**Requirements of Law**": As to any Person:

(a) Applicable Law.

(b) That Person's organizational documents.

(c) That Person's by-laws and/or other instruments which deal with corporate or similar governance, as applicable.

"**Reserve Percentage**": The decimal equivalent of that rate applicable to a Revolving Credit Lender under regulations issued from time to time by the Board of Governors of the Federal Reserve System for determining the maximum reserve requirement of that Revolving Credit Lender with respect to "Eurocurrency liabilities" as defined in such regulations. The Reserve Percentage applicable to a particular Eurodollar Loan shall be based upon that in effect during the subject Interest Period, with changes in the Reserve Percentage which take effect during such Interest Period to take effect (and to consequently change any interest rate determined with reference to the Reserve Percentage) if and when such change is applicable to such loans.

"**Revolving Credit**": Is defined in Section 2.1.

"**Revolving Credit Ceiling**": $100,000,000.00

"**Revolving Credit Closing Fee**": Is defined in Section 2.12.

"**Revolving Credit Dollar Commitment**": As set forth on **EXHIBIT 2.22**, annexed hereto (as such amounts may change in accordance with the provisions of this Agreement).

"**Revolving Credit Early Termination Fee**": Is defined in Section 2.14.

"**Revolving Credit Lenders**": Each Revolving Credit Lender to which reference is made in the Preamble of this Agreement and any other Person who becomes a "Revolving Credit Lender" in accordance with the provisions of to this Agreement.

"**Revolving Credit Loans**": Loans made under the Revolving Credit, except that where the term "Revolving Credit Loan" is used with reference to available interest rates applicable to the loans under the Revolving Credit, it refers to so much of the unpaid principal balance of the Loan Account as bears the same rate of interest for the same Interest Period. (See Section 2.11(d)).

"**Revolving Credit Note**": Is defined in Section 2.9.

"**Revolving Credit Percentage Commitment**": As set forth on **EXHIBIT 2.22**, annexed hereto (as such amounts may change in accordance with the provisions of this Agreement).

"**Seasonal Period**": Means that period from September 1 through November 30 each year.

"**Secondary Guarantor(s)**": Initially, The Disney Store (Canada) Ltd., an Ontario corporation, and Hoop Canada, Inc., a New Brunswick corporation, jointly, severally, and collectively.

"**Stated Amount**": The maximum amount for which an L/C may be honored.

"**SuperMajority Lenders**": Revolving Credit Lenders (other than Delinquent Revolving Credit Lenders) holding 66-2/3% or more the Revolving Credit Percentage Commitments (calculated without regard to any Revolving Credit Percentage Commitment of any Delinquent Revolving Credit Lender).

"**Supporting Obligation**": Has the meaning given that term in the UCC and also refers to a Letter-of-Credit Right or secondary obligation which supports the payment or performance of an Account, Chattel Paper, a Document, a General Intangible, an Instrument, or Investment Property.

"**Termination Date**": The earliest of (a) the Maturity Date; or (b) the occurrence of any event described in Section 10.11, below; or (c) the Agent's notice to the Lead Borrower setting the Termination Date on account of the occurrence of any Event of Default other than as described in Section 10.11, below; or (d) that date, ninety (90) days irrevocable written notice of which is provided by the Lead Borrower to the Agent.

"**Transfer**": Wire transfer pursuant to the wire transfer system maintained by the Board of Governors of the Federal Reserve Board, or as otherwise may be agreed to from time to time by the Agent making such Transfer and the subject Revolving Credit Lender. Wire instructions may be changed in the same manner that Notice Addresses may be changed (Section 18.1), except that no change of the wire instructions for Transfers to any Revolving Credit Lender shall be effective without the consent of the Agent.

"**UCC**": The Uniform Commercial Code as in effect from time to time in Massachusetts.

"**Unanimous Consent**": Consent of Revolving Credit Lenders (other than Delinquent Revolving Credit Lenders) holding 100% of the Loan Commitments (other than Loan Commitments held by a Delinquent Revolving Credit Lender).

"**Unused Line Fee**": Is defined in Section 2.13.

"**Walt Disney Companies**": Means Disney Enterprises, Inc., a Delaware corporation; and Disney Credit Card Services, Inc., a California corporation; and TDS Franchising, LLC, a California limited liability company.

**Article 2 The Revolving Credit:**

**2.1. Establishment of Revolving Credit.**

(a) The Revolving Credit Lenders hereby establish a revolving line of credit (the "Revolving Credit") in the Borrowers' favor pursuant to which each Revolving Credit Lender, subject to, and in accordance with, this Agreement, acting through the Agent, shall make loans and advances and otherwise provide financial accommodations to and for the account of the Borrowers as provided herein.

(i) Notwithstanding the foregoing, Hoop Retail Stores, LLC shall not have any right to request or obtain any loans or advances, nor shall any other Borrower transfer any proceeds of any loan or advance to Hoop Retail Stores, LLC, unless and until the Permitted Mergers have been consummated to the satisfaction of the Agent, in the Agent's sole and exclusive discretion.

(ii) From and after consummation of the Permitted Mergers, all terms and conditions of this Agreement and each of the other Loan Documents shall apply to, and address only the remaining Borrowers, and shall no longer apply to or address The Disney Store, LLC.

(b) Loans, advances, and financial accommodations under the Revolving Credit shall be made with reference to the Borrowing Base and shall be subject to Availability. The Borrowing Base and Availability shall be determined by the Agent by reference to Borrowing Base Certificates furnished as provided in Section 5.4, below, and shall be subject to the following:

(i) Such determination shall take into account such Reserves as the Agent may determine as being applicable thereto.

(ii) The Cost of Eligible Inventory will be determined in a manner consistent with current tracking practices,

based on the Borrowers' stock ledger inventory.

(c) The commitment of each Revolving Credit Lender to provide such loans, advances, and financial accommodations is subject to Section 2.23.

(d) The proceeds of borrowings under the Revolving Credit shall be used solely for the Borrowers' working capital and Capital Expenditures, and to make a portion of the working capital adjustment to be made pursuant to Section 2.3 and Section 3.3.1 of the Acquisition Agreement, all solely to the extent not prohibited by this Agreement. No proceeds of a borrowing under the Revolving Credit may be used, nor shall any be requested, with a view towards the accumulation of any general fund or funded reserve of the Borrowers other than in the ordinary course of the Borrowers' business and consistent with the provisions of this Agreement.

**2.2. Advances in Excess of Borrowing Base (OverLoans).**

(a) No Revolving Credit Lender has any obligation to the Borrowers to make any loan or advance, or otherwise to provide any credit to or for the benefit of the Borrowers where the result of such loan, advance, or credit is an OverLoan.

(b) The Revolving Credit Lenders' obligations, among themselves, are subject to (among other provisions of this Agreement) Section 13.2(a) (which relates to each Revolving Credit Lender's making amounts available to the Agent) and 16.3(a) (which relates to Protective OverAdvances).

(c) The Revolving Credit Lenders' providing of an OverLoan on any one occasion does not affect the obligations of each Borrower hereunder (including each Borrower's obligation to immediately repay any amount which otherwise constitutes an OverLoan) nor obligate the Revolving Credit Lenders to do so on any other occasion.

**2.3. Risks of Value of Collateral.** The Agent's reference to a given asset in connection with the making of loans, credits, and advances and the providing of financial accommodations under the Revolving Credit and/or the monitoring of compliance with the provisions hereof shall not be deemed a determination by the Agent or any Revolving Credit Lender relative to the actual value of the asset in question. All risks concerning the value of the Collateral are and remain upon the Borrowers. All Collateral secures the prompt, punctual, and faithful performance of the Liabilities whether or not relied upon by the Agent in connection with the making of loans, credits, and advances and the providing of financial accommodations under the Revolving Credit.

**2.4. Commitment to Make Revolving Credit Loans and Support Letters of Credit.** Subject to the provisions of this Agreement, the Revolving Credit Lenders shall make a loan or advance under the Revolving Credit and the Agent shall endeavor to have an L/C issued for the account of the Lead Borrower, in each instance if duly and timely requested by the Lead Borrower as provided herein provided that:

(a) No OverLoan is then outstanding and none will result therefrom.

(b) No Borrower is then In Default and none will thereby become In Default.

**2.5. Revolving Credit Loan Requests.**

(a) Requests for loans and advances under the Revolving Credit or for the continuance or conversion of an interest rate applicable to a Revolving Credit Loan may be requested by the Lead Borrower in such manner as may from time to time be acceptable to the Agent.

(b) Subject to the provisions of this Agreement, the Lead Borrower may request a Revolving Credit Loan and elect an interest rate and Interest Period to be applicable to that Revolving Credit Loan by giving notice to the Agent by no later than the following:

(i) If such Revolving Credit Loan is to be or is to be converted to a Prime Margin Loan: By 2:00 PM on the Business Day on which the subject Revolving Credit Loan is to be made or is to be so converted. Prime Margin Loans requested by the Lead Borrower, other than those resulting from the conversion of a Libor Loan, shall not be less than $10,000.00.

(ii) If such Revolving Credit Loan is to be, or is to be continued as, or converted to, a Libor Loan: By 2:00PM Three (3) Libor Business Days before the commencement of any new Interest Period or the end of the then applicable Interest Period. Libor Loans and conversions to Libor Loans shall each be not less than $1,000,000.00 and in increments of $500,000.00 in excess of such minimum.

(iii) Any Libor Loan which matures while any Borrower is In Default shall be converted, at the option of the Agent, to a Prime Margin Loan notwithstanding any notice from the Lead Borrower that such Loan is to be continued as a Libor Loan.

(c) Any request for a Revolving Credit Loan or for the continuance or conversion of an interest rate applicable to a Revolving Credit Loan which is made after the applicable deadline therefor, as set forth above, shall be deemed to have been made

at the opening of business on the then next Business Day or Libor Business Day, as applicable.

(d) The Lead Borrower may request that the Agent cause the issuance by the Issuer of L/C's for the account of the Borrowers as provided in Section 2.18.

(e) The Agent may rely on any request for a loan or advance, or other financial accommodation under the Revolving Credit which the Agent, in good faith, believes to have been made by a Person duly authorized to act on behalf of the Lead Borrower and may decline to make any such requested loan or advance, or issuance, or to provide any such financial accommodation pending the Agent's being furnished with such documentation concerning that Person's authority to act as may be satisfactory to the Agent.

(f) A request by the Lead Borrower for loan or advance, or other financial accommodation under the Revolving Credit shall be irrevocable and shall constitute certification by each Borrower that as of the date of such request, each of the following is true and correct:

(i) There has been no Material Adverse Change in the Borrowers' financial condition from the most recent financial information furnished Agent or any Revolving Credit Lender pursuant to this Agreement.

(ii) All or a portion of any loan or advance so requested will be set aside by the Borrowers to cover the Borrowers' obligations for sales tax on account of sales since the then most recent borrowing pursuant to the Revolving Credit.

(iii) Each representation which is made herein or in any of the Loan Documents is then true and complete as of and as if made on the date of such request.

(iv) That no Borrower is In Default, or if a Borrower is In Default, it shall be accompanied by a written Certificate of the Lead Borrower's President or its Chief Financial Officer describing (in reasonable detail) the facts and circumstances thereof and the steps (if any) being taken to remedy such condition (but such Certificate shall not relieve the specified Borrower from being In Default).

**2.6. Suspension of Revolving Credit.** If, at any time or from time to time, any Borrower is In Default or there has occurred a Material Adverse Change:

(a) The Agent may, and at the direction of the SuperMajority Lenders shall, suspend the Revolving Credit immediately, in which event, neither the Agent nor any Revolving Credit Lender shall be obligated, during such suspension, to make any loans or advance, or to provide any financial accommodation hereunder or to seek the issuance of any L/C

(b) The Agent may, and at the direction of the SuperMajority Lenders shall, b suspend the right of the Lead Borrower to request any Libor Loan or to convert any Prime Margin Loan to a Libor Loan.

**2.7. Making of Revolving Credit Loans.**

(a) A loan or advance under the Revolving Credit shall be made by the transfer of the proceeds of such loan or advance to the Operating Account or as otherwise instructed by the Lead Borrower.

(b) A loan or advance shall be deemed to have been made under the Revolving Credit (and the Borrowers shall be indebted to the Agent and the Revolving Credit Lenders for the amount thereof immediately) at the following:

(i) The Agent's initiation of the transfer of the proceeds of such loan or advance in accordance with the Lead Borrower's instructions (if such loan or advance is of funds requested by the Lead Borrower).

(ii) The charging of the amount of such loan to the Loan Account (in all other circumstances).

(c) There shall not be any recourse to or liability of the Agent or any Revolving Credit Lender, on account of:

(i) Any delay in the making of any loan or advance requested under the Revolving Credit.

(ii) Any delay by any bank or other depository institution in treating the proceeds of any such loan or advance as collected funds.

(iii) Any delay in the receipt, and/or any loss, of funds which constitute a loan or advance under the Revolving Credit, the wire transfer of which was properly initiated by the Agent in accordance with wire instructions provided to the Agent by the Lead Borrower.

**2.8. The Loan Account.**

(a) An account (**"Loan Account"**) shall be opened on the books of the Agent in which a record shall be kept of all loans and advances made under the Revolving Credit.

(b) The Agent shall also keep a record (either in the Loan Account or elsewhere, as the Agent may from time to time elect) of all interest, fees, service charges, costs, expenses, and other debits owed to the Agent and each Revolving Credit Lender on account of the Liabilities and of all credits against such amounts so owed.

(c) All credits against the Liabilities shall be conditional upon final payment to the Agent for the account of each Revolving Credit Lender of the items giving rise to such credits. The amount of any item credited against the Liabilities which is charged back against the Agent or any Revolving Credit Lender or is disgorged for any reason or is not so paid shall be a Liability and shall be added to the Loan Account, whether or not the item so charged back or not so paid is returned.

(d) Except as otherwise provided herein, all fees, service charges, costs, and expenses for which any Borrower is obligated hereunder are payable on demand. In the determination of Availability, the Agent may deem fees, service charges, accrued interest, and other payments which will be due and payable between the date of such determination and the first day of the then next succeeding month as having been advanced under the Revolving Credit whether or not such amounts are then due and payable.

(e) The Agent, without the request of the Lead Borrower, may advance under the Revolving Credit any interest, fee, service charge, or other payment to which the Agent or any Revolving Credit Lender is entitled from any Borrower pursuant hereto and may charge the same to the Loan Account notwithstanding that an OverLoan may result thereby. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and each Borrower's obligations under Section 2.10(b). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.8(e) shall bear interest at the interest rate then and thereafter applicable to Prime Margin Loans.

(f) Any statement rendered by the Agent or any Revolving Credit Lender to the Lead Borrower concerning the Liabilities shall be considered correct and accepted by each Borrower and shall be conclusively binding upon each Borrower unless the Lead Borrower provides the Agent with written objection thereto within twenty (20) days from the mailing of such statement, which written objection shall indicate, with particularity, the reason for such objection. The Loan Account and the Agent's books and records concerning the loan arrangement contemplated herein and the Liabilities shall be prima facie evidence and proof of the items described therein.

**2.9. The Revolving Credit Notes.** The Borrowers' obligation to repay loans and advances under the Revolving Credit, with interest as provided herein, shall be evidenced by Notes (each, a **"Revolving Credit Note"**) in the form of **EXHIBIT 2.10**, annexed hereto, executed by each Borrower, one payable to each Revolving Credit Lender. Neither the original nor a copy of any Revolving Credit Note shall be required, however, to establish or prove any Liability. In the event that any Revolving Credit Note is ever lost, mutilated, or destroyed, each Borrower shall execute a replacement thereof and deliver such replacement to the Agent.

**2.10. Payment of The Loan Account.**

(a) The Borrowers may repay all or any portion of the principal balance of the Loan Account from time to time until the Termination Date.

(b) The Borrowers, without notice or demand from the Agent or any Revolving Credit Lender, shall pay the Agent that amount, from time to time, which is necessary so that there is no OverLoan outstanding.

(c) The Borrowers shall repay the then entire unpaid balance of the Loan Account and all other Liabilities on the Termination Date.

(d) The Agent shall endeavor to cause the application of payments (if any), pursuant to Sections 2.11(a) and 2.11(b) against Libor Loans then outstanding in such manner as results in the least cost to the Borrowers, but shall not have any affirmative obligation to do so nor liability on account of the Agent's failure to have done so. In no event shall action or inaction taken by the Agent excuse any Borrower from any indemnification obligation under Section 2.10(e).

(e) The Borrowers shall indemnify the Agent and each Revolving Credit Lender and hold the Agent and each Revolving Credit Lender harmless from and against any loss, cost or expense (including loss of anticipated profits and amounts payable by the Agent or such Revolving Credit Lender on account of "breakage fees" (so-called)) which the Agent or such Revolving Credit Lender may sustain or incur (including, without limitation, by virtue of acceleration after the occurrence of any Event of Default) as a consequence of the following:

(i) Default by any Borrower in payment of the principal amount of or any interest on any Libor Loan as and when due and payable, including any such loss or expense arising from interest or fees payable by such Revolving Credit Lender in order to maintain its Libor Loans.

(ii) Default by any Borrower in making a borrowing or conversion after the Lead Borrower has given (or is deemed to have given) a request for a Revolving Credit Loan or a request to convert a Revolving Credit Loan from one applicable interest rate to another.

(iii) The making of any payment on a Libor Loan or the making of any conversion of any such Loan to a Prime

Margin Loan on a day that is not the last day of the applicable Interest Period with respect thereto.

**2.11. Interest on Revolving Credit Loans.**

(a) Each Revolving Credit Loan shall bear interest at the Prime Margin Rate unless timely notice is given (as provided in Section 2.5) that the subject Revolving Credit Loan (or a portion thereof) is, or is to be converted to, a Libor Loan.

(b) Each Revolving Credit Loan which consists of a Libor Loan shall bear interest at the applicable Libor Rate.

(c) Subject to, and in accordance with, the provisions of this Agreement, the Lead Borrower may cause all or a part of the unpaid principal balance of the Loan Account to bear interest at the Prime Margin Rate or the Libor Rate as specified from time to time by the Lead Borrower by notice to the Agent.

(d) For ease of reference and administration, each part of the Loan Account which bears interest at the same rate interest and for the same Interest Period is referred to herein as if it were a separate "Revolving Credit Loan".

(e) The Lead Borrower shall not select, renew, or convert any interest rate for a Revolving Credit Loan such that, in addition to interest at the Prime Margin Rate, there are more than Three (3) Libor Rates applicable to the Revolving Credit Loans at any one time.

(f) The Borrowers shall pay accrued and unpaid interest on each Revolving Credit Loan in arrears as follows:

(i) On the applicable Interest Payment Date for that Revolving Credit Loan.

(ii) On the Termination Date and on the End Date.

(iii) Following the occurrence of any Event of Default, with such frequency as may be determined by the Agent.

(g) Following the occurrence of any Event of Default (and whether or not the Agent exercises the Agent's rights on account thereof), all Revolving Credit Loans shall bear interest, at the option of the Agent or at the instruction of the SuperMajority Lenders at rate which is the aggregate of the rate applicable to Prime Margin Loans plus Two Percent (2%) per annum.

**2.12. Revolving Credit Closing Fee.** In consideration of the closing under this Agreement and the commitment to make loans and advances to the Borrowers under the Revolving Credit and to maintain sufficient funds available for such purpose, there has been earned and the Borrowers shall pay the **"Revolving Credit Closing Fee"** (so referred to herein) in the amount, and in the manner specified in the Fee Letter.

**2.13. Unused Line Fee.** In addition to any other fee to be paid by the Borrowers on account of the Revolving Credit, the Borrowers shall pay the Agent for the benefit of the Revolving Credit Lenders the **"Unused Line Fee"** (so referred to herein) of 0.30% per annum of the average difference, during the month just ended (or relevant period with respect to the payment being made on the Termination Date) between the Revolving Credit Ceiling and the aggregate of the unpaid principal balance of the Loan Account and the undrawn Stated Amount of L/C's outstanding during the relevant period. The Unused Line Fee shall be paid in arrears, on the first day of each month after the execution of this Agreement and on the Termination Date.

**2.14. Early Termination Fee.**

(a) In the event that the Termination Date occurs prior to April 21, 2006 for any reason, the Borrowers shall pay to the Agent, for the benefit of the Revolving Credit Lenders, the **"Revolving Credit Early Termination Fee"** (so referred to herein) in an amount equal to the product of (x) the Revolving Credit Ceiling, multiplied by (y) One-half of one percent (.50%).

(b) All parties to this Agreement agree and acknowledge that the Revolving Credit Lenders will have suffered damages on account of the early termination of the Revolving Credit and that, in view of the difficulty in ascertaining the amount of such damages, that the Early Termination Fee constitutes reasonable compensation and liquidated damages to compensate Revolving Credit Lenders on account thereof.

**2.15. Monitoring Fee.**

The Borrowers shall pay to the Agent a "**Monitoring Fee**" (so referred to herein) in the amount, and in the manner specified in the Fee Letter.

**2.16. Concerning Fees.** The Borrowers shall not be entitled to any credit, rebate or repayment of any fee earned by the Agent or any Revolving Credit Lender pursuant to this Agreement or any Loan Document notwithstanding any termination of this Agreement or suspension or termination of the Agent's and any Revolving Credit Lender's respective obligation to make loans and advances hereunder.

**2.17. Agent's and Revolving Credit Lenders' Discretion.**

(a) Each reference in the Loan Documents to the exercise of discretion or the like by the Agent or any Revolving Credit Lender shall be to such Person's exercise of its judgment, in good faith (which shall be presumed), based upon such information of which that Person then has actual knowledge.

(b) In the exercise of such discretion, the following may be taken into account.

(i) The reasonable anticipation: of an adverse change to the value of the Collateral; the enforceability of the Agent's Collateral Interests therein; or the amount which the Agent would likely realize therefrom (taking into account delays which may possibly be encountered in the Agent's realizing upon the Collateral and likely Costs of Collection).

(ii) The content, completeness, and accuracy of any report or financial information delivered to the Agent or any Revolving Credit Lender by or on behalf of any Borrower and the manner by such report or financial information was prepared.

(iii) The existence of circumstances which suggest an increase in the likelihood that any Borrower may become the subject of a bankruptcy or insolvency proceeding.

(iv) The existence of circumstances suggest that any Borrower is In Default.

(c) In the exercise of such discretion, the Agent and each Revolving Credit Lender also may take into account any of the following factors:

(i) Those included in, or tested by, the definitions of "Eligible Accounts," "Eligible Inventory" and "Cost".

(ii) The current financial and business climate of the industry in which each Borrower competes (having regard for that Borrower's position in that industry).

(iii) General macroeconomic conditions which have a material effect on the Borrowers' cost structure.

(iv) Material changes in or to the mix of the Borrowers' Inventory.

(v) Seasonality with respect to the Borrowers' Inventory and patterns of retail sales.

(vi) Such other factors as the Agent and each Revolving Credit Lender reasonably determine as having a material bearing on credit risks associated with the providing of loans and financial accommodations to the Borrowers.

(d) The burden of establishing the failure of the Agent or any Revolving Credit Lender to have acted in a reasonable manner in such Person's exercise of such discretion shall be the Borrowers' and may be made only by clear and convincing evidence.

**2.18. Procedures For Issuance of L/C's.**

(a) The Lead Borrower may request that the Agent cause the issuance by the Issuer of L/C's for the account of any Borrower. Each such request shall be in such manner as may from time to time be acceptable to the Agent. Each request for the issuance of an L/C, or the amendment, renewal, or extension of any outstanding L/C, shall be made in writing by an officer duly authorized to act on behalf of the Borrowers and delivered to the Agent via hand delivery, facsimile, or other electronic method of transmission reasonably in advance of the requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance satisfactory to the Agent in its discretion, and shall specify (i) the amount of such L/C, (ii) the date of issuance, amendment, renewal, or extension of such L/C, (iii) the expiration date of such L/C, (iv) the name and address of the beneficiary thereof (or the beneficiary of the underlying L/C, as applicable), and (v) such other information (including, in the case of an amendment, renewal, or extension, identification of the outstanding L/C to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such L/C.

(b) The Agent will endeavor to cause the issuance of any L/C so requested by the Lead Borrower, provided that, at the time that the request is made, the Revolving Credit has not been suspended as provided in Section 2.6 and if so issued:

(i) The aggregate Stated Amount of all L/C's then outstanding, does not exceed $90,000,000.00.

(ii) The expiry of the L/C is not later than the earlier of Thirty (30) days prior to the Maturity Date or the following:

(A) Standby's: One (1) year from initial issuance.

(B) Documentary's: One hundred twenty (120) days from issuance.

(iii) If the expiry of an L/C is later than the Maturity Date, it is 103% cash collateralized at its issuance.

(iv) An OverLoan will not result from the issuance of the subject L/C.

(c) Each Borrower shall execute such documentation to apply for and support the issuance of an L/C as may be required by the Issuer.

(d) There shall not be any recourse to, nor liability of, the Agent or any Revolving Credit Lender on account of

(i) Any delay or refusal by an Issuer to issue an L/C;

(ii) Any action or inaction of an Issuer on account of or in respect to, any L/C.

(e) The Borrowers shall reimburse the Issuer for the amount of any honoring of a drawing under an L/C on the same day on which such honoring takes place. The Agent, without the request of any Borrower, may advance under the Revolving Credit (and charge to the Loan Account) the amount of any honoring of any L/C and other amount for which any Borrower, the Issuer, or the Revolving Credit Lenders become obligated on account of, or in respect to, any L/C. Such advance shall be made whether or not any Borrower is In Default or such advance would result in an OverLoan. Such action shall not constitute a waiver of the Agent's rights under Section 2.11(b) hereof.

**2.19. Fees For L/C's.**

(a) The Borrower shall pay to the Agent a fee for the benefit of the Revolving Credit Lenders, on account of L/C's, the issuance of which had been procured by the Agent, monthly in arrears, and on the Termination Date and on the End Date, equal to the following percentage per annum of the weighted average Stated Amount of all L/C's outstanding during the period in respect of which such fee is being paid based upon the corresponding amount of Average Excess Availability as of the date of determination.

| Level | Standby Fee | Documentary Fee | Average Excess Availability |
|---|---|---|---|
| I | 1.75% | 1.25% | Greater than $20,000,000.00 |
| II | 2.00% | 1.50% | Less than or equal to $20,000,000.00 |

The Standby Fee and the Documentary Fee on the Closing Date shall be established at Level II for the initial fiscal quarter after the Closing Date and adjusted at the end of each fiscal quarter thereafter based upon the amount of Average Excess Availability. Following the occurrence of any Event of Default, such fee shall be increased by Two percent (2%) per annum.

(b) In addition to the fee to be paid as provided in Subsection 2.19(a), above, the Borrowers shall pay to the Agent (or to the Issuer, if so requested by Agent), on demand, all issuance, processing, negotiation, amendment, and administrative fees and other amounts charged by the Issuer on account of, or in respect to, any L/C, as provided in the Fee Letter.

(c) If any change in Applicable Law shall either:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirements against letters of credit heretofore or hereafter issued by any Issuer or with respect to which any Revolving Credit Lender or any Issuer has an obligation to lend to fund drawings under any L/C; or

(ii) impose on any Issuer any other condition or requirements relating to any such letters of credit;

and the result of any event referred to in Section 2.19(c)(i) or 2.19(c)(ii), above, shall be to increase the cost to any Revolving Credit Lender or to any Issuer of issuing or maintaining any L/C (which increase in cost shall be the result of such Issuer’s reasonable allocation among that Revolving Credit Lender’s or Issuer’s letter of credit customers of the aggregate of such cost increases resulting from such events), then, upon demand by the Agent and delivery by the Agent to the Lead Borrower of a certificate of an officer of the subject Revolving Credit Lender or the subject Issuer describing such change in law, executive order, regulation, directive, or interpretation thereof, its effect on such Revolving Credit Lender or such Issuer, and the basis for determining such increased costs and their allocation, the Borrowers shall immediately pay to the Agent, from time to time as specified by the Agent, such amounts as shall be sufficient to compensate the subject Revolving Credit Lender or the subject Issuer for such increased cost. Any Revolving Credit Lender’s or any Issuer’s determination of costs incurred under Section 2.19(c)(i) or 2.19(c)(ii), above, and the allocation, if any, of such costs among the Borrowers and other letter of credit customers of such Revolving Credit Lender or such Issuer, if done in good faith and made on an equitable basis and in accordance with such officer’s certificate, shall be conclusive and binding on the Borrowers.

**2.20. Concerning L/C's.**

(a) None of the Issuer, the Issuer's correspondents, any Revolving Credit Lender, the Agent, or any advising, negotiating, or paying bank with respect to any L/C shall be responsible in any way for:

(i) The performance by any beneficiary under any L/C of that beneficiary's obligations to any Borrower.

(ii) The form, sufficiency, correctness, genuineness, authority of any person signing; falsification; or the legal effect of; any documents called for under any L/C if (with respect to the foregoing) such documents on their face appear to be in order.

(b) The Issuer may honor, as complying with the terms of any L/C and of any drawing thereunder, any drafts or other documents otherwise in order, but signed or issued by an administrator, executor, conservator, trustee in bankruptcy, debtor in possession, assignee for the benefit of creditors, liquidator, receiver, or other legal representative of the party authorized under such L/C to draw or issue such drafts or other documents.

(c) Unless otherwise agreed to, in the particular instance, each Borrower hereby authorizes any Issuer to:

(i) Select an advising bank, if any.

(ii) Select a paying bank, if any.

(iii) Select a negotiating bank.

(d) All directions, correspondence, and funds transfers relating to any L/C are at the risk of the Borrowers. The Issuer shall have discharged the Issuer's obligations under any L/C which, or the drawing under which, includes payment instructions, by the initiation of the method of payment called for in, and in accordance with, such instructions (or by any other commercially reasonable and comparable method). None of the Agent, any Revolving Credit Lender, or the Issuer shall have any responsibility for any inaccuracy, interruption, error, or delay in transmission or delivery by post, telegraph or cable, or for any inaccuracy of translation.

(e) The Agent's, each Revolving Credit Lender's, and the Issuer's rights, powers, privileges and immunities specified in or arising under this Agreement are in addition to any heretofore or at any time hereafter otherwise created or arising, whether by statute or rule of law or contract.

(f) The obligations of the Borrowers under this Agreement with respect to L/C's are absolute, unconditional, and irrevocable and shall be performed strictly in accordance with the terms hereof under all circumstances, whatsoever including, without limitation, the following:

(i) Any lack of validity or enforceability or restriction, restraint, or stay in the enforcement of this Agreement, any L/C, or any other agreement or instrument relating thereto.

(ii) Any Borrower's consent to any amendment or waiver of, or consent to the departure from, any L/C.

(iii) The existence of any claim, set-off, defense, or other right which any Borrower may have at any time against the beneficiary of any L/C.

(iv) Any good faith honoring of a drawing under any L/C, which drawing possibly could have been dishonored based upon a strict construction of the terms of the L/C.

**2.21. Changed Circumstances.**

(a) The Agent may advise the Lead Borrower that the Agent has made the good faith determination (which determination shall be final and conclusive) of any of the following:

(i) Adequate and fair means do not exist for ascertaining the rate for Libor Loans.

(ii) The continuation of or conversion of any Revolving Credit Loan to a Libor Loan has been made impracticable or unlawful by the occurrence of a contingency that materially and adversely affects the applicable market or the compliance by the Agent or any Revolving Credit Lender in good faith with any Applicable Law.

(iii) The indices on which the interest rates for Libor Loans are based shall no longer represent the effective cost to the Agent or any Revolving Credit Lender for U.S. dollar deposits in the interbank market for deposits in which it regularly participates.

(b) In the event that the Agent advises the Lead Borrower of an occurrence described in Section 2.23(a), then, until the Agent notifies the Lead Borrower that the circumstances giving rise to such notice no longer apply:

(i) The obligation of the Agent or each Revolving Credit Lender to make loans of the type affected by such changed circumstances or to permit the Lead Borrower to select the affected interest rate as otherwise applicable to any

Revolving Credit Loans shall be suspended.

(ii) Any notice which the Lead Borrower had given the Agent with respect to any Libor Loan, the time for action with respect to which has not occurred prior to the Agent's having given notice pursuant to Section 2.11(a), shall be deemed at the option of the Agent to not having been given.

**2.22. Designation of Lead Borrower as Borrowers' Agent.**

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as that Borrower's agent to obtain loans and advances under the Revolving Credit, the proceeds of which shall be available to each Borrower for those uses as those set forth in Section 2.1(d). As the disclosed principal for its agent, each Borrower shall be obligated to the Agent and each Revolving Credit Lender on account of loans and advances so made under the Revolving Credit as if made directly by the Revolving Credit Lenders to that Borrower, notwithstanding the manner by which such loans and advances are recorded on the books and records of the Lead Borrower and of any Borrower.

(b) Each Borrower recognizes that credit available to it under the Revolving Credit 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 fully, faithfully, and punctually discharge all Liabilities of all of the Borrowers.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Revolving Credit Loan.

(d) The proceeds of each loan and advance provided under the Revolving Credit which is requested by the Lead Borrower shall be deposited into the Operating Account or as otherwise indicated by the Lead Borrower. The Lead Borrower shall cause the transfer of the proceeds thereof to the (those) Borrower(s) on whose behalf such loan and advance was obtained. Neither the Agent nor any Revolving Credit Lender shall have any obligation to see to the application of such proceeds.

**2.23. Lenders' Commitments.**

(a) Subject to Section 17.1 (which provides for assignments and assumptions of commitments), each Revolving Credit Lender's **"Revolving Credit Percentage Commitment"**, and **"Revolving Credit Dollar Commitment"** (respectively so referred to herein) is set forth on **EXHIBIT 2.22**, annexed hereto.

(b) The obligations of each Revolving Credit Lender are several and not joint. No Revolving Credit Lender shall have any obligation to make any loan under the Revolving Credit in excess of either of the following:

(i) That Revolving Credit Lender's Revolving Credit Percentage Commitment of the subject loan or advance or of Availability.

(ii) Any loan which, when aggregated with all other loans made by that Revolving Credit Lender under the Revolving Credit and then outstanding, exceed that Revolving Credit Lender's Revolving Credit Dollar Commitment.

(c) No Revolving Credit Lender shall have any liability to the Borrowers on account of the failure of any other Revolving Credit Lender to provide any loan or advance under the Revolving Credit nor any obligation to make up any shortfall which may be created by such failure.

(d) The Revolving Credit Dollar Commitments, Revolving Credit Commitment Percentages, and identities of the Revolving Credit Lenders may be changed, from time to time by the reallocation or assignment of Revolving Credit Dollar Commitments and Revolving Credit Commitment Percentages amongst the Revolving Credit Lenders or with other Persons who determine to become "Revolving Credit Lenders", provided, however unless an Event of Default has occurred (in which event, no consent of any Borrower is required) any assignment to a Person not then a Revolving Credit Lender shall be subject to the prior consent of the Lead Borrower (not to be unreasonably withheld), which consent will be deemed given unless the Lead Borrower provides the Agent with written objection, not more than Five (5) Business Days after the Agent shall have given the Lead Borrower written notice of a proposed assignment).

(e) Upon written notice given the Lead Borrower from time to time by the Agent, of any assignment or allocation referenced in Section 2.23(d):

(i) Each Borrower shall execute one or more replacement Revolving Credit Notes to reflect such changed Revolving Credit Dollar Commitments, Revolving Credit Commitment Percentages, and identities and shall deliver such replacement Revolving Credit Notes to the Agent (which promptly thereafter shall deliver to the Lead Borrower the Revolving Credit Notes so replaced) provided however, in the event that a Revolving Credit Note is to be exchanged following its acceleration or the entry of an order for relief under the Bankruptcy Code with respect to any Borrower, the Agent, in lieu of causing the Borrowers to execute one or more new Revolving Credit Notes, may issue the Agent's Certificate confirming the resulting Revolving Credit Dollar Commitments and Revolving Credit Percentage Commitments.

(ii) Such change shall be effective from the effective date specified in such written notice and any Person added as a Revolving Credit Lender shall have all rights and privileges of a Revolving Credit Lender hereunder thereafter as if such Person had been a signatory to this Agreement and any other Loan Document to which a Revolving Credit Lender is a signatory and any Person removed as a Revolving Credit Lender shall be relieved of any obligations or responsibilities of a Revolving Credit Lender hereunder thereafter.

**Article 3 Conditions Precedent:**

As a condition to the effectiveness of this Agreement, the establishment of the Revolving Credit, and the making of the first loan under the Revolving Credit, each of the documents respectively described in Sections 3.1 through and including 3.4, (each in form and substance satisfactory to the Agent) shall have been delivered to the Agent, and the conditions respectively described in Sections 3.5 through and including 3.9, shall have been satisfied:

**3.1. Corporate Due Diligence.**

(a) Certificates of corporate good standing for each Borrower, respectively issued by the Secretary of State for the state in which that Borrower is incorporated.

(b) Certificates of due qualification, in good standing, issued by the Secretary(ies) of State of each State in which the nature a Borrower's business conducted or assets owned could require such qualification.

(c) Certificates of each Borrower's Secretaries of the due adoption, continued effectiveness, and setting forth the texts of, each corporate resolution adopted in connection with the establishment of the loan arrangement contemplated by the Loan Documents and attesting to the true signatures of each Person authorized as a signatory to any of the Loan Documents.

**3.2. Opinion**. An opinion of counsel to the Borrowers in form and substance satisfactory to the Agent.

**3.3. Additional Documents and Information.** Such additional instruments, documents, and information as the Agent or its counsel reasonably may require or request including, without limitation, the following:

(a) Appraisal of the Borrowers' Inventory.

(b) Commercial finance examination performed by the Agent's examiners and/or agents.

(c) All Loan Documents.

(d) Lien search results with respect to the Borrowers' locations.

(e) Confirmation of filing of all necessary and appropriate Financing Statements and such other documents as may be required to perfect the Agent's and the Lenders' security interest in the Collateral.

(f) Receipt of discharges, releases, and terminations required to afford the Agent and the Lenders a first, perfected security interest in and to all Collateral, free and clear of all liens and encumbrances, other than Permitted Encumbrances.

(g) Confirmation of insurance and appropriate endorsements in favor of the Agent and the Lenders.

(h) Collateral access agreements, as may be necessary.

(i) Execution by all parties of the definitive Disney License Agreement and confirmation that the Disney License Agreement is in full force and effect.

(j) Confirmation by the Agent, in the Agent's sole and exclusive discretion, that all terms and conditions of the Acquisition Agreement have been satisfied, and that all conditions precedent to closing thereunder have been satisfied.

(k) Execution by all parties and delivery to the Agent of the Designation.

**3.4. Officers' Certificates.** Certificates executed by the President and the Chief Financial Officer of the Lead Borrower which state that

(a) Such officer, acting on behalf of the Borrowers, has reviewed each of the Loan Documents and has had the benefit of independent counsel (Attorneys Stroock & Stroock & Lavan LLP) of the Lead Borrower's selection in connection with the review and negotiation of the Loan Documents. In particular, and without limiting the generality of such review, the following provisions of the Loan Documents have been brought to the attention of the undersigned by such counsel:

(i) The waiver of the right to a trial by jury in connection with controversies arising out of the loan arrangement contemplated by the Loan Documents.

(ii) The designation of, and submission to the exclusive jurisdiction and venue of, certain courts.

(iii) Various other waivers and indemnifications included therein.

(iv) The circumstances under which the Liabilities could be accelerated and the grace periods available with respect to certain Events of Default.

(b) The representations and warranties made by the Borrowers to the Agent and the Revolving Credit Lenders in the Loan Documents are true and complete as of the date of such Certificate, and that no event has occurred which is or which, solely with the giving of notice or passage of time (or both) would be an Event of Default.

**3.5. Representations and Warranties.** Each of the representations made by or on behalf of each Borrower in this Agreement or in any of the other Loan Documents or in any other report, statement, document, or paper provided by or on behalf of each Borrower shall be true and complete as of the date as of which such representation or warranty was made.

**3.6. Minimum Day One Availability.** After giving effect to the first funding under the Revolving Credit; all then held checks (if any); accounts payable which are beyond credit terms then accorded the Borrowers; overdrafts; any charges to the Loan Account made in connection with the establishment of the credit facility contemplated hereby; and L/C's to be issued at, or immediately subsequent to, such establishment, Availability shall not be less than $7,000,000.00.

**3.7. All Fees and Expenses Paid.** All fees due at or immediately after the first funding under the Revolving Credit and all costs and expenses incurred by the Agent in connection with the establishment of the credit facility contemplated hereby (including the fees and expenses of counsel to the Agent) shall have been paid in full.

**3.8. No Borrower In Default.** No Borrower is In Default.

**3.9. No Adverse Change.** There has been no Material Adverse Change and no event shall have occurred or failed to occur, which occurrence or failure is or could have a materially adverse effect upon any Borrower's financial condition when compared with such financial condition at October 31, 2004.

**3.10. Benefit of Conditions Precedent.** The conditions set forth in this Article 3, are for the sole benefit of the Agent and each Revolving Credit Lender and may be waived by the Agent in whole or in part without prejudice to the Agent or any Revolving Credit Lender.

No document shall be deemed delivered to the Agent or any Revolving Credit Lender until received and accepted by the Agent at its offices in Boston, Massachusetts. Under no circumstances shall this Agreement take effect until executed and accepted by the Agent at said offices.

**Article 4 General Representations, Covenants and Warranties:**

To induce each Revolving Credit Lender to establish the credit facility contemplated herein and to induce the Revolving Credit Lenders to provide loans and advances under the Revolving Credit (each of which loans shall be deemed to have been made in reliance thereupon) the Borrowers, in addition to all other representations, warranties, and covenants made by any Borrower in any other Loan Document, make those representations, warranties, and covenants included in this Agreement.

**4.1. Payment and Performance of Liabilities.** The Borrowers shall pay each payment Liability when due (or when demanded, if payable on demand) and shall promptly, punctually, and faithfully perform each other Liability.

**4.2. Due Organization. Authorization. No Conflicts.**

(a) Each Borrower presently is and hereafter shall remain in good standing as a corporation under the laws of the State in which it is organized, as set forth in the Preamble to this Agreement and is and shall hereafter remain duly qualified and in good standing in every other State in which, by reason of the nature or location of each Borrowers' assets or operation of each Borrowers' business, such qualification may be necessary, except where the failure to so qualify would have no more than a de minimis adverse effect on the business or a assets of any Borrower.

(b) Each Borrower's respective organizational identification number assigned to it by the State of its incorporation and its respective federal employer identification number is listed on **EXHIBIT 4.2**, annexed hereto.

(c) No Borrower shall change its State of organization; any organizational identification number assigned to that Borrower by that State; or that Borrowers' federal taxpayer identification number.

(d) Each Affiliate is listed on EXHIBIT 4.2. The Lead Borrower shall provide the Agent with prior written notice of any entity's becoming or ceasing to be an Affiliate.

(e) Each Borrower has all requisite power and authority to execute and deliver all Loan Documents to which that Borrower is a party and has and will hereafter retain all requisite power to perform all Liabilities.

(f) The execution and delivery by each Borrower of each Loan Document to which it is a party; each Borrowers' consummation of the transactions contemplated by such Loan Documents (including, without limitation, the creation of Collateral

Interests by that Borrower to secure the Liabilities); each Borrowers' performance under those of the Loan Documents to which it is a party

(i) Have been duly authorized by all necessary action.

(ii) Do not, and will not, contravene in any material respect any provision of any Requirement of Law or obligation of that Borrower.

(iii) Will not result in the creation or imposition of, or the obligation to create or impose, any Encumbrance upon any assets of that Borrower pursuant to any Requirement of Law or obligation, except pursuant to the Loan Documents.

(g) The Loan Documents have been duly executed and delivered by each Borrower and are the legal, valid and binding obligations of each Borrower, enforceable against each Borrower in accordance with their respective terms.

**4.3. Trade Names.**

(a) **EXHIBIT 4.3**, annexed hereto, is a listing of:

(i) All names under which any Borrower ever conducted its business.

(ii) All Persons with whom any Borrower ever consolidated or merged, or from whom any Borrower ever acquired in a single transaction or in a series of related transactions substantially all of such Person's assets.

(b) The Lead Borrower will provide the Agent with not less than twenty-one (21) days prior written notice (with reasonable particularity) of any change to any Borrowers' name from that under which that Borrower is conducting its business at the execution of this Agreement and will not effect such change unless each Borrower is then in compliance with all provisions of this Agreement.

**4.4. Infrastructure.**

(a) Each Borrower has and will maintain a sufficient infrastructure to conduct its business as presently conducted and as contemplated to be conducted following its execution of this Agreement.

(b) Each Borrower owns and possesses, or has the right to use (and will hereafter own, possess, or have such right to use) all patents, industrial designs, trademarks, trade names, trade styles, brand names, service marks, logos, copyrights, trade secrets, know-how, confidential information, and other intellectual or proprietary property of any third Person necessary for that Borrower's conduct of that Borrower's business.

(c) The conduct by each Borrower of that Borrower's business does not presently infringe (nor will any Borrower conduct its business in the future so as to infringe) the patents, industrial designs, trademarks, trade names, trade styles, brand names, service marks, logos, copyrights, trade secrets, know-how, confidential information, or other intellectual or proprietary property of any third Person.

**4.5. Locations.**

(a) The Collateral, and the books, records, and papers of Borrowers' pertaining thereto, are kept and maintained solely at those locations which are listed on **EXHIBIT 4.5**, annexed hereto, which EXHIBIT includes, with respect to each such location, the name and address of the landlord on the Lease which covers such location (or an indication that a Borrower owns the subject location) and of all service bureaus with which any such records are maintained.

(b) No Borrower shall remove any of the Collateral from those locations listed on EXHIBIT 4.5 except for the following purposes:

(i) To accomplish sales of Inventory in the ordinary course of business.

(ii) To move Inventory from one such location to another such location.

(iii) To utilize such of the Collateral as is removed from such locations in the ordinary course of business (such as motor vehicles).

(c) No Borrower will, other than in the ordinary course of business:

(i) Execute, alter, modify, or amend any Lease.

(ii) Commit to, or open or close any location at which any Borrower maintains, offers for sales, or stores any of

the Collateral.

(d) Except as otherwise disclosed pursuant to, or permitted by, this Section 4.5, no tangible personal property of any Borrower is in the care or custody of any third party or stored or entrusted with a bailee or other third party and none shall hereafter be placed under such care, custody, storage, or entrustment.

**4.6. Encumbrances.**

(a) The Borrowers are, and shall hereafter remain, the owners of the Collateral free and clear of all Encumbrances other than any Permitted Encumbrance.

(b) No Borrower has, and none shall have, possession of any property on consignment to that Borrower.

(c) No Borrower shall acquire or obtain the right to use any Equipment, the acquisition or right to use of which Equipment is otherwise permitted by this Agreement, in which Equipment any third party has an interest, except for:

(i) Equipment which is merely incidental to the conduct of that Borrowers' business.

(ii) Equipment, the acquisition or right to use of which has been consented to by the Agent, which consent may be conditioned upon the Agent's receipt of such agreement with the third party which has an interest in such Equipment as is satisfactory to the Agent.

**4.7. Indebtedness.** The Borrowers do not and shall not hereafter have any Indebtedness other than any Permitted Indebtedness.

(a) Any Indebtedness on account of the Revolving Credit.

(b) The Indebtedness (if any) listed on **EXHIBIT 4.7**, annexed hereto.

(c) Indebtedness otherwise associated with the acquisition of Equipment otherwise in compliance with the requirements of Section 4.6(c) and permitted by the capital expenditure limitations imposed herein (Section 5.11).

**4.8. Insurance.**

(a) **EXHIBIT 4.8**, annexed hereto, is a schedule of all insurance policies owned by the Borrowers or under which any Borrower is the named insured. Each of such policies is in full force and effect. Neither the issuer of any such policy nor any Borrower is in default or violation of any such policy.

(b) The Borrowers shall have and maintain at all times insurance covering such risks, in such amounts, containing such terms, in such form, for such periods, and written by such companies as may be satisfactory to the Agent.

(c) All insurance carried by the Borrowers shall provide for a minimum of Sixty (60) days' prior written notice of cancellation to the Agent and all such insurance which covers the Collateral shall

(i) Include an endorsement in favor of the Agent, which endorsement shall provide that the insurance, to the extent of the Agent's interest therein, shall not be impaired or invalidated, in whole or in part, by reason of any act or neglect of any Borrower or by the failure of any Borrower to comply with any warranty or condition of the policy.

(ii) Not include an endorsement in favor of any other Person.

(d) The coverage reflected on EXHIBIT 4.8 presently satisfies the foregoing requirements, it being recognized by each Borrower, however, that such requirements may change hereafter to reflect changing circumstances.

(e) The Lead Borrower shall furnish the Agent from time to time with certificates or other evidence satisfactory to the Agent regarding compliance by the Borrowers with the foregoing requirements.

(f) In the event of the failure by the Borrowers to maintain insurance as required herein, the Agent, at its option and the Borrowers' expense, may obtain such insurance at the expense of the Borrowers, provided, however, the Agent's obtaining of such insurance shall not constitute a cure or waiver of any Event of Default occasioned by the Borrowers' failure to have maintained such insurance.

(g) The Borrowers shall maintain at all times those policies of insurance obtained by the Borrowers and assigned to the Lender.

**4.9. Licenses.** The Disney License Agreement and each other license, distributorship, franchise, and similar agreement issued to, or to which any Borrower is a party is in full force and effect. No party to any such license or agreement is in default or violation thereof. No Borrower has received any notice or threat of cancellation of any such license or agreement.

**4.10. Leases. EXHIBIT 4.10**, annexed hereto, is a schedule of all presently effective Capital Leases. (Exhibit 4.5 includes a list of all other presently effective Leases). Each of such Leases and Capital Leases is in full force and effect. No party to any such Lease or Capital Lease is in default or violation of any such Lease or Capital Lease. No Borrower has received any notice or threat of cancellation of any such Lease or Capital Lease. Each Borrower hereby authorizes the Agent at any time and from time to time to contact any of the Borrowers' respective landlords in order to confirm the Borrowers' continued compliance with the terms and conditions of the Lease(s) between the subject Borrower and that landlord and to discuss such issues, concerning the subject Borrower's occupancy under such Lease(s), as the Agent may determine.

**4.11. Requirements of Law.** Each Borrower is in compliance with, and shall hereafter comply with and use its assets in compliance with, all Requirements of Law except where the failure of such compliance will not have more than a de minimis adverse effect on the Borrowers' business or assets. No Borrower has received any notice of any violation of any Requirement of Law (other than of a violation which has no more than a de minimis adverse effect on the Borrowers' business or assets), which violation has not been cured or otherwise remedied.

**4.12. Labor Relations.**

(a) No Borrower has been, and none is presently a party to any collective bargaining or other labor contract.

(b) There is not presently pending and, to any Borrower's knowledge, there is not threatened any of the following:

(i) Any strike, slowdown, picketing, work stoppage, or employee grievance process.

(ii) Any proceeding against or affecting any Borrower relating to the alleged violation of any Applicable Law pertaining to labor relations or before National Labor Relations Board, the Equal Employment Opportunity Commission, or any comparable governmental body, organizational activity, or other labor or employment dispute against or affecting any Borrower, which, if determined adversely to that Borrower could have more than a de minimis adverse effect on that Borrower.

(iii) Any lockout of any employees by any Borrower (and no such action is contemplated by any Borrower).

(iv) Any application for the certification of a collective bargaining agent.

(c) No event has occurred or circumstance exists which could provide the basis for any work stoppage or other labor dispute.

(d) Each Borrower:

(i) Has complied in all material respects with all Applicable Law relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar taxes, occupational safety and health, and plant closing.

(ii) Is not liable for the payment of more than a de minimus amount of compensation, damages, taxes, fines, penalties, or other amounts, however designated, for that Borrower's failure to comply with any Applicable Law referenced in Section 4.12(d)(i).

**4.13. Maintain Properties.** The Borrowers shall:

(a) Keep the Collateral in good order and repair (ordinary reasonable wear and tear and insured casualty excepted).

(b) Not suffer or cause the waste or destruction of any material part of the Collateral.

(c) Not use any of the Collateral in violation of any policy of insurance thereon.

(d) Not transfer any material asset, material amount of cash, or other material proceeds of Collateral to Hoop Holdings, LLC, except as permitted by Section 4.19 of this Agreement.

(e) Not sell, lease, or otherwise dispose of any of the Collateral, other than the following:

(i) The sale of Inventory in compliance with this Agreement.

(ii) The disposal of Equipment which is obsolete, worn out, or damaged beyond repair, which Equipment is replaced to the extent necessary to preserve or improve the operating efficiency of any Borrower.

(iii) Permitted Dispositions.

(iv) The turning over to the Agent of all Receipts as provided herein.

**4.14. Taxes.**

(a) With respect to the Borrowers' federal, state, and local tax liability and obligations:

(i) The Lead Borrower, in compliance with all Applicable Law, has properly filed all returns due to be filed up to the date of this Agreement.

(ii) Except as described on **EXHIBIT 4.14**:

(A) At no time has any Borrower received from any taxing authority any request to perform any examination of or with respect to any Borrower nor any other written or verbal notice in any way relating to any claimed failure by any Borrower to comply with all Applicable Law concerning payment of any taxes or other amounts in the nature of taxes.

(B) No agreement is extant which waives or extends any statute of limitations applicable to the right of any taxing authority to assert a deficiency or make any other claim for or in respect to federal income taxes.

(C) No issue has been raised in any tax examination of any Borrower which, by application of similar principles, reasonably could be expected to result in the assertion of a deficiency for any fiscal year open for examination, assessment, or claim by any taxing authority.

(b) The Borrowers have, and hereafter shall: pay, as they become due and payable, all taxes and unemployment contributions and other charges of any kind or nature levied, assessed or claimed against any Borrower or the Collateral by any person or entity whose claim could result in an Encumbrance upon any asset of any Borrower or by any governmental authority; properly exercise any trust responsibilities imposed upon any Borrower by reason of withholding from employees' pay or by reason of any Borrowers' receipt of sales tax or other funds for the account of any third party; timely make all contributions and other payments as may be required pursuant to any Employee Benefit Plan now or hereafter established by any Borrower; and timely file all tax and other returns and other reports with each governmental authority to whom any Borrower is obligated to so file.

**4.15. No Margin Stock.** No Borrower is engaged in the business of extending credit for the purpose of purchasing or carrying any margin stock (within the meaning of Regulations U, T, and X of the Board of Governors of the Federal Reserve System of the United States). No part of the proceeds of any borrowing hereunder will be used at any time to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock.

**4.16. ERISA.**

(a) Neither any Borrower nor any ERISA Affiliate has ever:

(i) Violated or failed to be in full compliance with any Borrower's Employee Benefit Plan.

(ii) Failed timely to file all reports and filings required by ERISA to be filed by any Borrower.

(iii) Engaged in any nonexempt "prohibited transactions" or "reportable events" (respectively as described in ERISA).

(iv) Engaged in, or committed, any act such that a tax or penalty reasonably could be imposed upon any Borrower on account thereof pursuant to ERISA.

(v) Accumulate any material cumulative funding deficiency within the meaning of ERISA.

(vi) Terminated any Employee Benefit Plan such that a lien could be asserted against any assets of any Borrower on account thereof pursuant to ERISA.

(vii) Been a member of, contributed to, or have any obligation under any Employee Benefit Plan which is a multiemployer plan within the meaning of Section 4001(a) of ERISA.

(b) Neither any Borrower nor any ERISA Affiliate shall ever engage in any action of the type described in Section 4.16(a).

**4.17. Hazardous Materials.**

(a) No Borrower has ever: (i) been legally responsible for any release or threat of release of any Hazardous Material or (ii) received notification of the incurrence of any expense in connection with the assessment, containment, or removal of any Hazardous Material for which that Borrower would be responsible.

(b) Each Borrower shall: (i) dispose of any Hazardous Material only in compliance with all Environmental Laws and (ii) have possession of any Hazardous Material only in the ordinary course of that Borrowers' business and in compliance with all

Environmental Laws.

**4.18. Litigation.** Except as described in **EXHIBIT 4.18**, annexed hereto, there is not presently pending or threatened by or against any Borrower any suit, action, proceeding, or investigation which, if determined adversely to any Borrower, would have more than a de minimis adverse effect upon a Borrower's financial condition or ability to conduct its business as such business is presently conducted or is contemplated to be conducted in the foreseeable future.

**4.19. Dividends. Investments. Corporate Action.** No Borrower shall:

(a) Pay any cash dividend or make any other distribution in respect of any class of that Borrower's capital stock, except for: (i) dividends permitted by, and made in accordance with Section 9.13.3(b) of the License Agreement to make payments due under the "Tax Sharing Agreement" or "Intercompany Services Agreement" to which the Borrowers are parties, or to repay that portion of the working capital adjustment paid by The Children's Place Retail Stores, Inc., and (ii) the investment of funds by Hoop Retail Stores, LLC or The Disney Store, LLC into and for the benefit of Hoop Canada, Inc. or The Disney Store (Canada) Ltd. in an amount not to exceed $5,000,000.00 in the aggregate at any one time, or the making of dividends by Hoop Canada, Inc. and/or Hoop Canada Holdings, Inc. directly or indirectly to and for the benefit of Hoop Retail Stores, LLC or The Disney Store, LLC.

(b) Make any payment on account of any Indebtedness other than payment of the Liabilities (other than Indebtedness owed by one Borrower to another Borrower).

(c) Own, redeem, retire, purchase, or acquire any of any Borrower's capital stock.

(d) Invest in or purchase any stock or securities or rights to purchase any such stock or securities, of any Person other than a Permitted Investment.

(e) Merge or consolidate or be merged or consolidated with or into any other corporation or other entity, other than with respect to the Permitted Mergers.

(f) Consolidate any of that Borrower's operations with those of any other Person other than of another Borrower.

(g) Organize or create any Affiliate.

(h) Subordinate any debts or obligations owed to that Borrower by any third party to any other debts owed by such third party to any other Person.

(i) Acquire any assets other than in the ordinary course and conduct of that Borrower's business as conducted at the execution of this Agreement.

**4.20. Loans.** No Borrower shall make any loans or advances to, nor acquire the Indebtedness of, any Person, provided, however, the foregoing does not prohibit any of the following:

(a) Advance payments made to that Borrower's suppliers in the ordinary course.

(b) Advances to that Borrower's officers, employees, and salespersons with respect to reasonable expenses to be incurred by such officers, employees, and salespersons for the benefit of that Borrower, which expenses are properly substantiated by the person seeking such advance and properly reimbursable by that Borrower.

(c) Advances permitted pursuant to Section 4.7(b) of this Agreement.

**4.21. Protection of Assets.** The Agent, in the Agent's discretion, and from time to time, may discharge any tax or Encumbrance on any of the Collateral, or take any other action which the Agent may deem necessary or desirable to repair, insure, maintain, preserve, collect, or realize upon any of the Collateral. The Agent shall not have any obligation to undertake any of the foregoing and shall have no liability on account of any action so undertaken except where there is a specific finding in a judicial proceeding (in which the Agent has had an opportunity to be heard), from which finding no further appeal is available, that the Agent had acted in actual bad faith or in a grossly negligent manner. The Borrowers shall pay to the Agent, on demand, or the Agent, in its discretion, may add to the Loan Account, all amounts paid or incurred by the Agent pursuant to this Section 4.21.

**4.22. Line of Business.** No Borrower shall engage in any business other than the business in which it is currently engaged or a business reasonably related thereto.

**4.23. Affiliate Transactions.** No Borrower shall make any payment, nor give any value to any Affiliate except for goods and services actually purchased by that Borrower from, or sold by that Borrower to, such Affiliate for a price and on terms which shall

(a) be competitive and fully deductible as an "ordinary and necessary business expense" and/or fully depreciable under the Internal Revenue Code of 1986 and the Treasury Regulations, each as amended; and

(b) be no less favorable to that Borrower than those which would have been charged and imposed in an arms length transaction.

**4.24. Executive Pay.**

(a) The only Executive Officers of the Borrowers, at the execution of this Agreement, are those individuals referenced in the definition of "Executive Officers", above.

(b) Prior to the execution of this Agreement, the Lead Borrower furnished the Agent with copies of all written Executive Agreements and outlines of the salient features of all unwritten Executive Agreements (as amended to date) then extant. There are no unwritten agreements or understandings between any Borrower and any Executive Officer which relate to Executive Pay, written disclosure of which has not been made to the Agent.

(c) No Borrower will:

(i) Enter into any Executive Agreement not extant at the execution of this Agreement.

(ii) Alter, amend, supplement, or otherwise change any Executive Agreement.

(iii) Pay, provide, or facilitate any Executive Pay other than as provided in an Executive Agreement or, if not covered by an Executive Agreement, as permitted pursuant to Section 4.23 hereof.

**4.25. Further Assurances.**

(a) No Borrower is the owner of, nor has it any interest in, any property or asset which not be subject to a perfected Collateral Interest in favor of the Agent (subject only to Permitted Encumbrances) to secure the Liabilities, other than the License Agreement and each of the other assets specifically excluded from the definition of Collateral as set forth in Section 8.1 of this Agreement.

(b) No Borrower will hereafter acquire any asset or any interest in property which is not, immediately upon such acquisition, subject to such a perfected Collateral Interest in favor of the Agent to secure the Liabilities (subject only to Permitted Encumbrances).

(c) Each Borrower shall execute and deliver to the Agent such instruments, documents, and papers, and shall do all such things from time to time hereafter as the Agent may request to carry into effect the provisions and intent of this Agreement; to protect and perfect the Agent's Collateral Interests in the Collateral; and to comply with all applicable statutes and laws, and facilitate the collection of the Receivables Collateral. Each Borrower shall execute all such instruments as may be required by the Agent with respect to the recordation and/or perfection of the Collateral Interests created or contemplated herein.

(d) Each Borrower hereby designates the Agent as and for that Borrowers' true and lawful attorney, with full power of substitution, to sign and file any financing statements in order to perfect or protect the Agent's Collateral Interests in the Collateral.

(e) This Agreement constitutes an authenticated record which authorizes the Agent to file such financing statements as the Agent determines as appropriate to perfect or protect the Collateral Interests created by this Agreement.

(f) A carbon, photographic, or other reproduction of this Agreement or of any financing statement or other instrument executed pursuant to this Section 4.25 shall be sufficient for filing to perfect the security interests granted herein.

**4.26. Adequacy of Disclosure.**

(a) All financial statements furnished to the Agent and to each Revolving Credit Lender by each Borrower have been prepared in accordance with GAAP consistently applied and present fairly the condition of the Borrowers at the date(s) thereof and the results of operations and cash flows for the period(s) covered (provided however, that unaudited financial statements are subject to normal year end adjustments and to the absence of footnotes). There has been no change in the Consolidated financial condition, results of operations, or cash flows of the Borrowers since the date(s) of such financial statements, other than changes in the ordinary course of business, which changes have not been materially adverse, either singularly or in the aggregate.

(b) No Borrower has any contingent obligations or obligation under any Lease or Capital Lease which is not noted in the Borrowers' Consolidated financial statements furnished to the Agent and to each Revolving Credit Lender prior to the execution of this Agreement.

(c) No document, instrument, agreement, or paper now or hereafter given to the Agent or to any Revolving Credit Lender by or on behalf of each Borrower or any guarantor of the Liabilities in connection with the execution of this Agreement by the Agent and to each Revolving Credit Lender contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements therein not misleading. There is no fact known to any Borrower which has, or which, in the foreseeable future could have, a material adverse effect on the financial condition of any Borrower or any such guarantor which has not been disclosed in writing to the Agent and to each Revolving Credit Lender.

**4.27. No Restrictions on Liabilities.** Except as may contemplated by, and in accordance with the Disney License Agreement, no Borrower shall enter into or directly or indirectly become subject to any agreement which prohibits or restricts, in any manner, any Borrowers':

(a) Creation of, and granting of Collateral Interests in favor of the Agent.

(b) Incurrence of Liabilities.

**4.28. Other Covenants.** No Borrower shall indirectly do or cause to be done any act which, if done directly by that Borrower, would breach any covenant contained in this Agreement.

**Article 5 Financial Reporting and Performance Covenants:**

**5.1. Maintain Records.** The Borrowers shall:

(a) At all times, keep proper books of account, in which full, true, and accurate entries shall be made of all of the Borrowers' financial transactions, all in accordance with GAAP applied consistently with prior periods to fairly reflect the Consolidated financial condition of the Borrowers at the close of, and its results of operations for, the periods in question.

(b) Timely provide the Agent with those financial reports, statements, and schedules required by this Article 5 or otherwise, each of which reports, statements and schedules shall be prepared, to the extent applicable, in accordance with GAAP applied consistently with prior periods to fairly reflect the Consolidated financial condition of the Borrowers at the close of, and the results of operations for, the period(s) covered therein.

(c) At all times, keep accurate current records of the Collateral including, without limitation, accurate current stock, cost, and sales records of its Inventory, accurately and sufficiently itemizing and describing the kinds, types, and quantities of Inventory and the cost and selling prices thereof.

(d) At all times, retain independent certified public accountants who are reasonably satisfactory to the Agent and instruct such accountants to fully cooperate with, and be available to, the Agent to discuss the Borrowers' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such accountants, as may be raised by the Agent.

(e) Not change any Borrower's fiscal year.

**5.2. Access to Records.**

(a) Each Borrower shall afford the Agent with access from time to time as the Agent may require to all properties owned by or over which any Borrower has control. The Agent shall have the right, and each Borrower will permit the Agent from time to time as Agent may request, to examine, inspect, copy, and make extracts from any and all of the Borrowers' books, records, electronically stored data, papers, and files. Each Borrower shall make all of that Borrower's copying facilities available to the Agent.

(b) Each Borrower hereby authorizes the Agent to:

(i) Inspect, copy, duplicate, review, cause to be reduced to hard copy, run off, draw off, and otherwise use any and all computer or electronically stored information or data which relates to any Borrower, or any service bureau, contractor, accountant, or other person, and directs any such service bureau, contractor, accountant, or other person fully to cooperate with the Agent with respect thereto.

(ii) Verify at any time the Collateral or any portion thereof, including verification with Account Debtors, and/or with each Borrower's computer billing companies, collection agencies, and accountants and to sign the name of each Borrower on any notice to each Borrower's Account Debtors or verification of the Collateral.

(c) The Agent from time to time may designate one or more representatives to exercise the Agent's rights under this Section 5.2 as fully as if the Agent were doing so.

**5.3. Immediate Notice to Agent.** The Lead Borrower shall provide the Agent with written notice promptly upon the occurrence of any of the following events, which written notice shall be with reasonable particularity as to the facts and circumstances in respect of which such notice is being given:

(a) Any change in any Borrower's President, chief executive officer, chief operating officer, and chief financial officer (without regard to the title(s) actually given to the Persons discharging the duties customarily discharged by officers with those titles).

(b) Any ceasing of any Borrower's making of payment, in the ordinary course, to any of its creditors (other than its ceasing of making of such payments on account of a de minimis dispute).

(c) Any failure by any Borrower to pay rent at any of that Borrower's locations, which failure continues for more than Twenty-one (21) days following the last day on which such rent was payable without more than a de minimis adverse effect to that Borrower.

(d) Any Material Adverse Change in the business, operations, or financial affairs of any Borrower.

(e) Any Borrower's becoming In Default.

(f) Any intention on the part of any Borrower to discharge that Borrower's present independent accountants or any withdrawal or resignation by such independent accountants from their acting in such capacity (as to which, see Subsection 5.1(d)).

(g) Any litigation which, if determined adversely to any Borrower, might have a material adverse effect on the financial condition of that Borrower.

**5.4. Borrowing Base Certificate.** The Lead Borrower shall provide the Agent by 12:30 p.m., daily, with a Borrowing Base Certificate (in the form of **EXHIBIT 5.4** annexed hereto, as such form may be revised from time to time by the Agent). Such Certificate may be sent to the Agent by facsimile transmission, provided that the original thereof is forwarded to the Agent on the date of such transmission.

**5.5. Weekly Reports.** Weekly, on Tuesday of each week (as of the then immediately preceding Saturday) the Lead Borrower shall provide the Agent with a sales audit report and a flash collateral report (each in such form as may be specified from time to time by the Agent). Such report may be sent to the Agent by facsimile transmission, provided that the original thereof is forwarded to the Agent on the date of such transmission.

**5.6. Monthly Reports.** Monthly, the Lead Borrower shall provide the Agent with those financial statements and reports described in **EXHIBIT 5.6**, annexed hereto.

**5.7. Annual Reports.**

(a) Annually, in addition to the timely submission of the monthly reporting required at the end of every month, within ninety (90) days following the end of the Borrowers' fiscal year, the Lead Borrower shall furnish the Agent with an original signed counterpart of the Borrowers' Consolidated annual financial statement, which statement shall have been prepared by, and bear the unqualified opinion of, the Lead Borrower's independent certified public accountants (i.e. said statement shall be "certified" by such accountants) and shall include, at a minimum (with comparative information for the then prior fiscal year) a balance sheet, income statement, statement of changes in shareholders' equity, cash flows, and schedules of consolidation.

(b) No later than the earlier of Fifteen (15) days prior to the end of each of the Borrowers' fiscal years or the date on which such accountants commence their work on the preparation of the Borrowers' annual financial statement, the Lead Borrower shall give written notice to such accountants (with a copy of such notice, when sent, to the Agent) that:

(i) Such annual financial statement will be delivered by the Lead Borrower to the Agent (for subsequent distribution to each Revolving Credit Lender).

(ii) It is the primary intention of the Borrowers, in its engagement of such accountants, to satisfy the financial reporting requirements set forth in this Article 5.

(iii) The Lead Borrower has been advised that the Agent and each Revolving Credit Lender will rely thereon with respect to the administration of, and transactions under, the credit facility contemplated by this Agreement.

(c) Each annual statement shall be accompanied by such accountant's Certificate indicating that, in conducting the audit for such annual statement, nothing came to the attention of such accountants to believe that the Borrower is not In Default (or that if the Borrower is in Default, the facts and circumstances thereof).

**5.8. Officers' Certificates.** The Lead Borrower shall cause either the Lead Borrower's President or its Chief Financial Officer, in each instance, to provide such Person's Certificate with those monthly financial statements to be provided within Thirty (30) days of the end of each month and with those to be provided quarterly and annual statements to be furnished pursuant to this Agreement, which Certificate shall:

(a) Indicate that the subject statement was prepared in accordance with GAAP consistently applied and presents fairly the Consolidated financial condition of the Borrowers at the close of, and the results of the Borrowers' operations and cash flows for, the period(s) covered, subject, however to the following:

(i) Usual year end adjustments (this exception shall not be included in the Certificate which accompanies such annual statement).

(ii) Material Accounting Changes (in which event, such Certificate shall include a schedule (in reasonable detail) of the effect of each such Material Accounting Change) not previously specifically taken into account in the determination of the financial performance covenant imposed pursuant to Section 5.11.

(b) Indicate either that (i) no Borrower is In Default, or (ii) if such an event has occurred, its nature (in reasonable detail) and the steps (if any) being taken or contemplated by the Borrowers to be taken on account thereof.

(c) Include calculations concerning the Borrowers' compliance (or failure to comply) at the date of the subject statement with each of the financial performance covenants included in Section 5.11 hereof.

(d) Include confirmation that all of the Borrowers' taxes, insurance premiums, and rental payments are current in all respects.

**5.9. Inventories, Appraisals, and Audits.**

(a) The Agent, at the expense of the Borrowers, may participate in and/or observe each physical count and/or inventory of so much of the Collateral as consists of Inventory which is undertaken on behalf of any Borrower.

(b) The Borrowers, at their own expense, shall cause not less than One (1) physical inventories to be undertaken with respect to each of the Borrowers' store locations, in each Twelve (12) month period during which this Agreement is in effect (the scheduling of which shall be subject to the Agent's discretion) conducted by such inventory takers as are satisfactory to the Agent and following such methodology as may be satisfactory to the Agent.

(i) The Lead Borrower shall provide the Agent with a copy of the preliminary results of each such inventory (as well as of any other physical inventory undertaken by any Borrower) within Ten (10) days following the completion of such inventory.

(ii) The Lead Borrower, within Thirty (30) days following the completion of such inventory, shall provide the Agent with a reconciliation of the results of each such inventory (as well as of any other physical inventory undertaken by any Borrower) and shall post such results to the Borrowers' stock ledger and, as applicable to the Borrowers' other financial books and records .

(iii) The Agent, in its discretion, if any Borrower is In Default, may cause such additional inventories to be taken as the Agent determines (each, at the expense of the Borrowers).

(c) The Agent contemplates conducting up to Three (3) appraisals of the Collateral during any Twelve (12) month period, but in its discretion may obtain additional appraisals of the Collateral, from time to time (in all events, at the Borrowers' expense) conducted by such appraisers as are satisfactory to the Agent during such period.

(d) The Agent contemplates conducting up to Three (3) commercial finance field examinations (in each event, at the Borrowers' expense) of the Borrowers' books and records during any Twelve (12) month period during which this Agreement is in effect, but in its discretion, may undertake additional such audits (likewise at the Borrower's expense) during such period.

**5.10. Additional Financial Information.**

(a) In addition to all other information required to be provided pursuant to this Article 5, the Lead Borrower promptly shall provide the Agent (and any guarantor of the Liabilities), with such other and additional information concerning the Borrowers, the Collateral, the operation of the Borrowers' business, and the Borrowers' financial condition, including original counterparts of financial reports and statements, as the Agent may from time to time request from the Lead Borrower.

(b) The Lead Borrower may provide the Agent, from time to time hereafter, with updated forecasts of the Borrowers' anticipated performance and operating results.

(c) In all events, the Lead Borrower, no sooner than Ninety (90) nor later than Thirty (30) days prior to the end of each of the Borrowers' fiscal years, shall provide the Agent with an updated and extended forecast which shall go out at least through the end of the then next fiscal year and shall include an income statement, balance sheet, and statement of cash flow, by month, each Consolidated (with consolidating schedules) and each prepared in conformity with GAAP and consistent with the Borrowers' then current practices.

(d) The Agent, following the receipt of any of such forecast, may, but shall not be under any obligation to, provide its written sign-off on such forecast (in which event, such forecast shall become the Business Plan) and if it provides such written sign-off, may by written notice to the Lead Borrower, extend or revise the financial performance covenants included on EXHIBIT 5.11, annexed hereto.

(e) In the event that the Agent does not provide its sign-off with respect to the updated and extended forecast to be provided at year-end pursuant to Section 5.10(c), above, then the Agent, by written notice to the Lead Borrower, may revise, roll-over, or extend, for the then coming fiscal year, the financial performance covenants applicable to the Borrowers pursuant to Section 5.11 hereof by extrapolation from the Business Plan.

(f) Each Borrower recognizes that all appraisals, inventories, analysis, financial information, and other materials which the Agent may obtain, develop, or receive with respect to the Borrowers are confidential to the Agent and that, except as otherwise provided herein, no Borrower is entitled to receipt of any of such appraisals, inventories, analysis, financial information, and other materials, nor copies or extracts thereof or therefrom.

**5.11. Financial Performance Covenants.** The Borrowers shall observe and comply with those financial performance covenants set forth on **EXHIBIT 5.11(a)**, annexed hereto, certain of which covenants are based on the Business Plan set forth on **EXHIBIT 5.11(b)**, annexed hereto. Such financial performance covenants are subject to change, revision, roll over, and extension as provided in Section 5.10(d) hereof. Compliance with such financial performance covenants shall be made as if no Material Accounting Changes had been made (other than any Material Accounting Changes specifically taken into account in the setting of such covenants). The Agent may determine the Borrowers' compliance with such covenants based upon financial reports and statements provided by the Lead Borrower to the Agent (whether or not such financial reports and statements are required to be furnished pursuant to this Agreement) as well as by reference to interim financial information provided to, or developed by, the Agent.

**Article 6 Use of Collateral:**

**6.1. Use of Inventory Collateral.**

(a) No Borrower shall engage in any of the following with respect to its Inventory:

(i) Any sale other than

(A) for fair consideration in the conduct of the Borrowers' business in the ordinary course or,

(B) a Permitted Disposition.

(ii) Sales or other dispositions to creditors.

(iii) Sales or other dispositions in bulk (other than as part of a Permitted Disposition).

(iv) Sales of any Collateral in breach of any provision of this Agreement.

(b) No sale of Inventory shall be on consignment, approval, or under any other circumstances such that, such Inventory may be returned to a Borrower without the consent of the Agent.

**6.2. Inventory Quality.** All Inventory now owned or hereafter acquired by each Borrower is and will be of good and merchantable quality and free from defects (other than defects within customary trade tolerances).

**6.3. Adjustments and Allowances.** Each Borrower may grant such allowances or other adjustments to that Borrower's Account Debtors (exclusive of extending the time for payment of any Account or Account Receivable, which shall not be done without first obtaining the Agent's prior written consent in each instance) as that Borrower may reasonably deem to accord with sound business practice, provided, however, the authority granted the Borrowers pursuant to this Section 6.3 may be limited or terminated by the Agent at any time in the Agent's discretion.

**6.4. Validity of Accounts.**

(a) The amount of each Account shown on the books, records, and invoices of the Borrowers represented as owing by each Account Debtor is and will be the correct amount actually owing by such Account Debtor and shall have been fully earned by performance by the Borrowers.

(b) The Agent from time to time may verify the Receivables Collateral directly with the Borrowers' Account Debtors, such verification to be undertaken in keeping with commercially reasonable commercial lending standards.

(c) No Borrower has any knowledge of any impairment of the validity or collectability of any of the Accounts. The Lead Borrower shall notify the Agent of any such impairment immediately after any Borrower becomes aware of any such impairment.

(d) No Borrower shall post any bond to secure any Borrower's performance under any agreement to which any Borrower is a party nor cause any surety, guarantor, or other third party obligee to become liable to perform any obligation of any Borrower (other than to the Agent) in the event of any Borrower's failure so to perform.

**6.5. Notification to Account Debtors.** The Agent shall have the right (whether or not an Event of Default has occurred) to notify any of the Borrowers' Account Debtors to make payment directly to the Agent and to collect all amounts due on account of the Collateral.

**Article 7 Cash Management. Payment of Liabilities:**

**7.1. The Blocked, and Operating Accounts.**

(a) The following checking accounts have been or will be established (and are so referred to herein):

(i) The "Blocked Account" (so referred to herein): Established by the Borrower with Wachovia Bank.

(ii) The "Operating Account" (so referred to herein): Established by the Borrower with Wachovia Bank.

(b) The contents of each DDA (other than the Operating Account) and of the Blocked Account constitutes Collateral and Proceeds of Collateral.

(c) The Borrowers shall pay all fees and charges of, and maintain such impressed balances as may be required by the depository in which any account is opened as required hereby (even if such account is opened by and/or is the property of the Agent).

**7.2. Proceeds and Collections.**

(a) All Receipts and all cash proceeds of any sale or other disposition of any of each Borrower's assets:

(i) Constitute Collateral and proceeds of Collateral.

(ii) Shall be held in trust by the Borrowers for the Agent.

(iii) After deposit into a DDA, if applicable, shall be transferred only to the Blocked Account.

(b) The Lead Borrower shall cause the ACH or wire transfer to the Blocked Account, not less frequently than daily (except in a circumstance, as confirmed in writing by the Agent, in the Agent's sole and exclusive discretion, where (x) remaining Availability is greater than $20,000,000.00, and (y) the Borrowers are not In Default and/or no Event of Default has occurred) of the following:

(i) The then contents of each DDA (other than any Exempt DDA), each such transfer to be net of any minimum balance, not to exceed $1,000.00, as may be required to be maintained in the subject DDA by the bank at which such DDA is maintained.

(ii) The proceeds of all credit card charges not otherwise provided for pursuant hereto.

(iii) Telephone advice (confirmed by written notice) shall be provided to the Agent on each Business Day on which any such transfer is made.

(c) In the event that, notwithstanding the provisions of this Section 7.2, any Borrower receives or otherwise has dominion and control of any Receipts, or any proceeds or collections of any Collateral, such Receipts, proceeds, and collections shall be held in trust by that Borrower for the Agent and shall not be commingled with any of that Borrower's other funds or deposited in any account of any Borrower other than as instructed by the Agent.

**7.3. Payment of Liabilities.**

(a) On each Business Day, the Agent shall apply the then collected balance of the Blocked Account (net of fees charged, and of such impressed balances as may be required by the bank at which the Blocked Account is maintained) towards the unpaid balance of the Loan Account and all other Liabilities; provided, however, for purposes of the calculation of interest on the unpaid principal balance of the Loan Account, such payment shall be deemed to have been made One (1) Business Day after such transfer.

(b) The following rules shall apply to deposits and payments under and pursuant to this Section 7.3:

(i) Funds shall be deemed to have been deposited to the Blocked Account on the Business Day on which deposited, provided that notice of such deposit is available to the Agent by 2:00PM on that Business Day.

(ii) Funds paid to the Agent, other than by deposit to the Blocked Account, shall be deemed to have been received on the Business Day when they are good and collected funds, provided that notice of such payment is available to the Agent by 2:00PM on that Business Day.

(iii) If notice of a deposit to the Blocked Account (Section 7.3(b)(i) or payment (Section 7.3(b)(ii)) is not available to the Agent until after 2:00PM on a Business Day, such deposit or payment shall be deemed to have been made at 9:00AM on the then next Business Day.

(iv) All deposits to the Blocked Account and other payments to the Agent are subject to clearance and collection.

(c) The Agent shall transfer to the Operating Account any surplus in the Blocked Account remaining after the application towards the Liabilities referred to in Section 7.3(a), above (less those amount which are to be netted out, as provided therein) provided, however, in the event that

(i) any Borrower is In Default; and

(ii) one or more L/C's are then outstanding,

then the Agent may establish a funded reserve of up to 103% of the aggregate Stated Amounts of such L/C's. Such funded reserve shall either be (i) returned to the Lead Borrower provided that no Borrower is In Default or (ii) applied towards the Liabilities following the occurrence of any Event of Default described in Section 10.11 or acceleration following the occurrence of any other Event of Default.

**7.4. The Operating Account.** Except as otherwise specifically provided in, or permitted by, this Agreement, all checks shall be drawn by the Lead Borrower upon, and other disbursements shall be made by the Lead Borrower solely from, the Operating Account.

**Article 8 Grant of Security Interest:**

**8.1. Grant of Security Interest.** To secure the Borrowers' prompt, punctual, and faithful performance of all and each of the Liabilities, each Borrower hereby grants to the Agent, for the ratable benefit of the Revolving Credit Lenders, a continuing security interest in and to, and assigns to the Agent, for the ratable benefit of the Revolving Credit Lenders, the following, and each item thereof, whether now owned or now due, or in which that Borrower has an interest, or hereafter acquired, arising, or to become due, or in which that Borrower obtains an interest, and all products, Proceeds, substitutions, and accessions of or to any of the following (all of which, together with any other property in which the Agent may in the future be granted a security interest, is referred to herein as the **"Collateral"**):

(a) All Accounts and accounts receivable.

(b) All Inventory.

(c) All General Intangibles.

(d) All Equipment.

(e) All Goods.

(f) All Fixtures.

(g) All Chattel Paper.

(h) All Letter-of-Credit Rights.

(i) All Payment Intangibles.

(j) All Supporting Obligations.

(k) All books, records, and information relating to the Collateral and/or to the operation of each Borrowers' business, and all rights of access to such books, records, and information, and all property in which such books, records, and information are stored, recorded, and maintained.

(l) All Leasehold Interests.

(m) All Investment Property, Instruments, Documents, Deposit Accounts, money, policies and certificates of insurance, deposits, impressed accounts, compensating balances, cash, or other property.

(n) All insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing. (8.1(a)) through 8.1(m)) or otherwise.

(o) All liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing (8.1(a)) through 8.1(n)), including the right of stoppage in transit.

The foregoing notwithstanding, none of the following shall be part of the Collateral: Disney Dollars, Gift Cards, Disney Stored Value Cards, or Theme Park Admission Passes (as such terms are defined in the License Agreement).

**8.2. Extent and Duration of Security Interest.**

(a) The security interest created and granted herein is in addition to, and supplemental of, any security interest previously granted by any Borrower to the Agent and shall continue in full force and effect applicable to all Liabilities until both

(i) all Liabilities have been paid and/or satisfied in full; and

(ii) the security interest created herein is specifically terminated in writing by a duly authorized officer of the Agent.

(b) It is intended that the Collateral Interests created herein extend to and cover all assets of each Borrower, other than those assets specifically excluded from the Collateral, as set forth on **EXHIBIT 8.2(b)**, annexed hereto.

**Article 9 Agent As Borrowers' Attorney-In-Fact:**

**9.1. Appointment as Attorney-In-Fact.** Each Borrower hereby irrevocably constitutes and appoints the Agent (acting through any officer of the Agent) as that Borrowers' true and lawful attorney, with full power of substitution, following the occurrence of an Event of Default, to convert the Collateral into cash at the sole risk, cost, and expense of that Borrower, but for the sole benefit of the Agent and the Revolving Credit Lenders. The rights and powers granted the Agent by this appointment include but are not limited to the right and power to:

(a) Prosecute, defend, compromise, or release any action relating to the Collateral.

(b) Sign change of address forms to change the address to which each Borrowers' mail is to be sent to such address as the Agent shall designate; receive and open each Borrowers' mail; remove any Receivables Collateral and Proceeds of Collateral therefrom and turn over the balance of such mail either to the Lead Borrower or to any trustee in bankruptcy or receiver of the Lead Borrower, or other legal representative of a Borrower whom the Agent determines to be the appropriate person to whom to so turn over such mail.

(c) Endorse the name of the relevant Borrower in favor of the Agent upon any and all checks, drafts, notes, acceptances, or other items or instruments; sign and endorse the name of the relevant Borrower on, and receive as secured party, any of the Collateral, any invoices, schedules of Collateral, freight or express receipts, or bills of lading, storage receipts, warehouse receipts, or other documents of title respectively relating to the Collateral.

(d) Sign the name of the relevant Borrower on any notice to that Borrowers' Account Debtors or verification of the Receivables Collateral; sign the relevant Borrowers' name on any Proof of Claim in Bankruptcy against Account Debtors, and on notices of lien, claims of mechanic's liens, or assignments or releases of mechanic's liens securing the Accounts.

(e) Take all such action as may be necessary to obtain the payment of any letter of credit and/or banker's acceptance of which any Borrower is a beneficiary.

(f) Repair, manufacture, assemble, complete, package, deliver, alter or supply goods, if any, necessary to fulfill in whole or in part the purchase order of any customer of each Borrower.

(g) Use, license or transfer any or all General Intangibles of each Borrower.

**9.2. No Obligation to Act.** The Agent shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 9.1 herein, but if the Agent elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to any Borrower for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Agent has had an opportunity to be heard) which determination includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

**Article 10 Events of Default:**

The occurrence of any event described in this Article 10 respectively shall constitute an "**Event of Default**" herein. The occurrence of any Event of Default shall also constitute, without notice or demand, a default under all other agreements between the Agent or any Revolving Credit Lender and any Borrower and instruments and papers heretofore, now, or hereafter given the Agent or any Revolving Credit Lender by any Borrower.

**10.1. Failure to Pay the Revolving Credit.** The failure by any Borrower to pay when due any principal of, interest on, or fees in respect of, the Revolving Credit.

**10.2. Failure To Make Other Payments.** The failure by any Borrower to pay when due (or upon demand, if payable on demand) any payment Liability other than any payment liability on account of the principal of, or interest on, or fees in respect of, the Revolving Credit.

**10.3. Failure to Perform Covenant or Liability (No Grace Period).** The failure by any Borrower to promptly, punctually, faithfully and timely perform, discharge, or comply with any covenant or Liability included in any of the following provisions hereof:

Section Relates to

| | |
|---|---|
| 4.7 | Indebtedness |
| 4.14 | Pay taxes |
| 4.19 | Dividends. Investments. Other Corporate Actions |
| 4.23 | Affiliate Transactions |
| Article 5 | Reporting Requirements and Financial Performance Covenants |
| Article 7 | Cash Management |

**10.4. Failure to Perform Covenant or Liability (Grace Period).** The failure by any Borrower, within ten (10) days following the earlier of any Borrowers' knowledge of a breach of any covenant or Liability not described in any of Sections 10.2, or 10.3 or of its receipt of written notice from the Agent of the breach of any of any of such covenants or Liabilities.

**10.5. Misrepresentation.** The determination by the Agent that any representation or warranty at any time made by any Borrower to the Agent or any Revolving Credit Lender was not true or complete in all material respects when given.

**10.6. Acceleration of Other Debt. Breach of Other Agreements.** The occurrence of any event such that (i) any Indebtedness of any Borrower to any creditor other than the Agent or any Revolving Credit Lender in an amount greater than $500,000.00 could be accelerated, (ii) without the consent of any Borrower, any material Lease could be terminated (whether or not the subject creditor or lessor takes any action on account of such occurrence), or (iii) the occurrence of any event which constitutes an event of default, or any event which would, solely with notice or the passage of time, or both, would constitute an event of default under any documents, instruments, or agreements entered into by any Borrower with the Walt Disney Companies, including without limitation, the Disney License Agreement (whether or not any of the Walt Disney Companies has taken any action on account of such occurrence).

**10.7. Default Under Other Agreements.** The occurrence of any breach of any covenant or Liability imposed by, or of any default under, any agreement (including any Loan Document) between the Agent or any Revolving Credit Lender and any Borrower or instrument given by any Borrower to the Agent or any Revolving Credit Lender and the expiry, without cure, of any applicable grace period (notwithstanding that the subject Agent or Revolving Credit Lender may not have exercised all or any of its rights on account of such breach or default).

**10.8. Uninsured Casualty Loss.** The occurrence of any uninsured loss, theft, damage, or destruction of or to any material portion of the Collateral.

**10.9. Attachment. Judgment. Restraint of Business.**

(a) The service of process upon the Agent or any Revolving Credit Lender or any Participant seeking to attach, by trustee, mesne, or other process, any funds of any Borrower on deposit with, or assets of any Borrower in the possession of, the Agent or that Revolving Credit or such Participant.

(b) The entry of any judgment against any Borrower in an amount of $500,000.00 or more, which judgment is not satisfied (if a money judgment) or appealed from (with execution or similar process stayed) within fifteen (15) days of its entry.

(c) The entry of any order or the imposition of any other process having the force of law, the effect of which is to restrain in any material way the conduct by any Borrower of its business in the ordinary course.

**10.10. Business Failure.** Any act by, against, or relating to any Borrower, or its property or assets, which act constitutes the determination, by any Borrower, to initiate a program of partial or total self-liquidation; application for, consent to, or sufferance of the appointment of a receiver, trustee, or other person, pursuant to court action or otherwise, over all, or any part of any Borrower's property; the granting of any trust mortgage or execution of an assignment for the benefit of the creditors of any Borrower, or the occurrence of any other voluntary or involuntary liquidation or extension of debt agreement for any Borrower; the offering by or entering into by any Borrower of any composition, extension, or any other arrangement seeking relief from or extension of the debts of any Borrower; or the initiation of any judicial or non-judicial proceeding or agreement by, against, or including any Borrower which seeks or intends to accomplish a reorganization or arrangement with creditors; and/or the initiation by or on behalf of any Borrower of the liquidation or winding up of all or any part of any Borrower's business or operations.

**10.11. Bankruptcy.** The failure by any Borrower to generally pay the debts of that Borrower as they mature; adjudication of bankruptcy or insolvency relative to any Borrower; the entry of an order for relief or similar order with respect to any Borrower in any proceeding pursuant to the Bankruptcy Code or any other federal bankruptcy law; the filing of any complaint, application, or petition by any Borrower initiating any matter in which any Borrower is or may be granted any relief from the debts of that Borrower pursuant to the Bankruptcy Code or any other insolvency statute or procedure; the filing of any complaint, application, or petition against any Borrower initiating any matter in which that Borrower is or may be granted any relief from the debts of that Borrower pursuant to the Bankruptcy Code or any other insolvency statute or procedure, which complaint, application, or petition

is not timely contested in good faith by that Borrower by appropriate proceedings or, if so contested, is not dismissed within thirty (30) days of when filed.

**10.12. Indictment - Forfeiture.** The indictment of, or institution of any legal process or proceeding against, any Borrower, under any Applicable Law where the relief, penalties, or remedies sought or available include the forfeiture of any property of any Borrower and/or the imposition of any stay or other order, the effect of which could be to restrain in any material way the conduct by any Borrower of its business in the ordinary course.

**10.13. Guarantor's Default** The occurrence of any Guarantor's Default.

**10.14. Termination of Guaranty.** The termination or attempted termination of any guaranty by any Guarantor or Secondary Guarantor.

**10.15. Challenge to Loan Documents.**

(a) Any challenge by or on behalf of any Borrower to the validity of any Loan Document or the applicability or enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto.

(b) Any determination by any court or any other judicial or government authority that any Loan Document is not enforceable strictly in accordance with the subject Loan Document's terms or which voids, avoids, limits, or otherwise adversely affects any security interest created by any Loan Document or any payment made pursuant thereto.

**10.16. Key Management.** The death or disability of, or failure to exercise that authority and discharge those management responsibilities with respect to the Lead Borrower as are exercised and discharged by, both Ezra Dabah and Mario Ciampi at the execution of this Agreement if not replaced by executives approved by the Agent in its reasonable credit judgment within Ninety (90) days after such death or disability or the commencement of such failure.

**10.17. Change in Control.** Any Change in Control.

**Article 11 Rights and Remedies Upon Default:**

**11.1. Acceleration.** Upon the occurrence of any Event of Default as described in Section 10.11, all Indebtedness of the Borrowers to the Revolving Credit Lenders shall be immediately due and payable. Upon the occurrence of any Event of Default other than as described in Section 10.11, the Agent may (and on the issuance of Acceleration Notice(s) requisite to the causing of Acceleration, the Agent shall) declare all Indebtedness of the Borrowers to the Revolving Credit Lenders to be immediately due and payable and may exercise all of the Agent's Rights and Remedies as the Agent from time to time thereafter determines as appropriate.

**11.2. Rights of Enforcement.** Subject to and only to the extent permitted by the terms and conditions of the Designation and in compliance with Section 16.5 of the Disney License Agreement, the Agent shall have all of the rights and remedies of a secured party upon default under the UCC, in addition to which the Agent shall have all and each of the following rights and remedies:

(a) To give notice to any bank at which any DDA or Blocked Account is maintained and in which Proceeds of Collateral are deposited, to turn over such Proceeds directly to the Agent.

(b) To give notice to any customs broker of any of the Borrowers to follow the instructions of the Agent as provided in any written agreement or undertaking of such broker in favor of the Agent.

(c) To collect the Receivables Collateral with or without the taking of possession of any of the Collateral.

(d) To take possession of all or any portion of the Collateral.

(e) To sell, lease, or otherwise dispose of any or all of the Collateral, in its then condition or following such preparation or processing as the Agent deems advisable and with or without the taking of possession of any of the Collateral.

(f) To apply the Receivables Collateral or the Proceeds of the Collateral towards (but not necessarily in complete satisfaction of) the Liabilities.

(g) To exercise all or any of the rights, remedies, powers, privileges, and discretions under all or any of the Loan Documents.

**11.3. Sale of Collateral.** Subject to and only to the extent permitted by the terms and conditions of the Designation and in compliance with Section 16.5 of the Disney License Agreement,

(a) Any sale or other disposition of the Collateral may be at public or private sale upon such terms and in such manner as the Agent deems advisable, having due regard to compliance with any statute or regulation which might affect, limit, or apply to

the Agent's disposition of the Collateral.

(b) Unless the Collateral is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market (in which event the Agent shall provide the Lead Borrower such notice as may be practicable under the circumstances), the Agent shall give the Lead Borrower at least ten (10) days prior notice, by authenticated record, of the date, time, and place of any proposed public sale, and of the date after which any private sale or other disposition of the Collateral may be made. Each Borrower agrees that such written notice shall satisfy all requirements for notice to that Borrower which are imposed under the UCC or other applicable law with respect to the exercise of the Agent's rights and remedies upon default.

(c) The Agent and any Revolving Credit Lender may purchase the Collateral, or any portion of it at any sale held under this Article.

(d) If any of the Collateral is sold, leased, or otherwise disposed of by the Agent on credit, the Liabilities shall not be deemed to have been reduced as a result thereof unless and until payment is finally received thereon by the Agent.

(e) The Agent shall apply the proceeds of the Agent's exercise of its rights and remedies upon default pursuant to this Article 11

**11.4. Occupation of Business Location.** Subject to and only to the extent permitted by the terms and conditions of the Designation and in compliance with Section 16.5 of the Disney License Agreement, in connection with the Agent's exercise of the Agent's rights under this Article 11, the Agent may enter upon, occupy, and use any premises owned or occupied by each Borrower, and may exclude each Borrower from such premises or portion thereof as may have been so entered upon, occupied, or used by the Agent. The Agent shall not be required to remove any of the Collateral from any such premises upon the Agent's taking possession thereof, and may render any Collateral unusable to the Borrowers. In no event shall the Agent be liable to any Borrower for use or occupancy by the Agent of any premises pursuant to this Article 11, nor for any charge (such as wages for any Borrowers' employees and utilities) incurred in connection with the Agent's exercise of the Agent's Rights and Remedies.

**11.5. Grant of Nonexclusive License.** Each Borrower hereby grants to the Agent a royalty free nonexclusive irrevocable license to use, apply, and affix any trademark, trade name, logo, or the like in which any Borrower now or hereafter has rights (but excluding any such rights under the Disney License Agreement), such license being with respect to the Agent's exercise of the rights hereunder including, without limitation, in connection with any completion of the manufacture of Inventory or sale or other disposition of Inventory.

**11.6. Assembly of Collateral.** Subject to and only to the extent permitted by the terms and conditions of the Designation and in compliance with Section 16.5 of the Disney License Agreement,, the Agent may require any Borrower to assemble the Collateral and make it available to the Agent at the Borrowers' sole risk and expense at a place or places which are reasonably convenient to both the Agent and the Lead Borrower.

**11.7. Rights and Remedies.** The rights, remedies, powers, privileges, and discretions of the Agent hereunder (herein, the "**Agent's Rights and Remedies**") shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. No delay or omission by the Agent in exercising or enforcing any of the Agent's Rights and Remedies shall operate as, or constitute, a waiver thereof. No waiver by the Agent of any Event of Default or of any default under any other agreement shall operate as a waiver of any other default hereunder or under any other agreement. No single or partial exercise of any of the Agent's Rights or Remedies, and no express or implied agreement or transaction of whatever nature entered into between the Agent and any person, at any time, shall preclude the other or further exercise of the Agent's Rights and Remedies. No waiver by the Agent of any of the Agent's Rights and Remedies on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. Subject to and only to the extent permitted by the terms and conditions of the Designation and in compliance with Section 16.5 of the Disney License Agreement. the Agent's Rights and Remedies may be exercised at such time or times and in such order of preference as the Agent may determine. The Agent's Rights and Remedies may be exercised without resort or regard to any other source of satisfaction of the Liabilities.

**Article 12 Cure and Reinstatement Rights**

Notwithstanding anything to the contrary contained in Article 10, or Article 11, or Article 14, the Agent’s Rights and Remedies shall be subject to the following terms and conditions, and subject to and only to the extent permitted by the terms and conditions of the Designation and in compliance with Section 16.5 of the Disney License Agreement.

**12.1. Financially Curable Defaults.** The following Defaults or Events of Default shall constitute "**Financially Curable Defaults**" (so referred to herein): (i) payment defaults, whether with respect to the Liabilities, or otherwise; (ii) breach of Financial Performance Covenants, and (iii) breach of Availability and Borrowing Base requirements.

(a) Upon any Borrower becoming In Default or upon the occurrence of any Event of Default with respect to Financially Curable Defaults, the Agent shall provide written notice thereof to the Borrowers and to the Walt Disney Companies. The notice shall set forth the actions necessary to be taken, and the amount of cash required to be paid to the Agent by either the Borrowers and/or a third party on their behalf to so implement the cure required by the Agent. The Borrowers acknowledge that any such cure may be further conditioned upon the Borrowers and/or such third party reimbursing the Agent for all costs and expenses incurred incidental to the Default or Event of Default and the implementation of the cure, including attorneys fees and expenses, as well as the assessment by the Lender and the payment by the Borrowers and/or such third party of an appropriate waiver fee in an amount to be determined by the Agent, in the Agent's sole and exclusive discretion.

(b) Any such cure shall be implemented to the satisfaction of the Agent, in its reasonable discretion, and the required amounts paid to the Agent, within Five (5) Business Days of delivery of the notice from the Agent. If the Borrowers and/or such third party do in fact implement the steps and make the payment required by the Agent, then the Agent shall deliver written confirmation thereof, whereupon the Default or Event of Default shall be deemed cured and the Revolving Credit shall be reinstated.

**12.2. Non-Curable Defaults.** The Borrowers acknowledge and agree that the following Defaults and Events of Default constitute "**Non-Curable Defaults** (so referred to herein)," cannot be cured, and that they have no right to cure or attempt to cure any Default or Event of Default related to the events described in any of Sections 10.5 (Misrepresentation), 10.10 (Business Failure), 10.11 (Bankruptcy), 10.12 (Indictment - Forfeiture), or 10.15 (Challenge to Loan Documents). Upon the occurrence of any Default or Event of Default with respect to Non-Curable Defaults, the Agent may commence enforcing the Agent's Rights and Remedies in accordance with Article 11.

**12.3. Other Defaults.** To the extent that a Default or Event of Default occurs for a reason other than those specified in Section 12.1 or Section 12.2 (collectively, "**Other Defaults**"), and the circumstance(s) giving rise to any Other Defaults is(are) susceptible of being cured, as determined by the Agent in its sole and exclusive discretion, the Agent may, in its sole and exclusive discretion, afford the Borrowers and any third party acting on the Borrowers' behalf the opportunity of attempting to cure any such Other Default.

(a) In such circumstance, the Agent shall provide written notice thereof to the Borrowers and to the Walt Disney Companies. The notice shall set forth the actions necessary to be taken, and/or the amount of cash required to be paid to the Agent by either the Borrowers and/or such third party to so implement the cure required by the Agent. The Borrowers acknowledge that any such cure may be further conditioned upon the Borrowers and/or such third party reimbursing the Agent for all costs and expenses incurred incidental to the Default or Event of Default and the implementation of the cure, including attorneys fees and expenses, as well as the assessment by the Lender and the payment by the Borrowers and/or such third party of an appropriate waiver fee in an amount to be determined by the Agent, in the Agent's sole and exclusive discretion.

(b) Any such cure shall be implemented to the satisfaction of the Agent, in its reasonable discretion, and the required amounts paid to the Agent, within Five (5) Business Days of delivery of the notice from the Agent. If the Borrowers and/or such third party do in fact implement the steps and make the payment required by the Agent, then the Agent shall deliver written confirmation thereof, whereupon the Default or Event of Default shall be deemed cured and the Revolving Credit shall be reinstated.

**12.4. Pending Cure; Failure to Cure.** The Borrowers acknowledge and agree that pending the potential cure by the Borrowers or any third party of any Financially Curable Default or Other Default, the Agent and the Revolving Credit Lenders shall have no obligation to make any additional Revolving Credit Loans or extend financial accommodations to or for the benefit of any Borrower. In the event that the Walt Disney Companies or any third party that is acceptable to the Agent in its reasonable credit judgment desires to assist with any potential cure, the Agent and the Borrowers each agree and commit to work diligently and in good faith to address the Default or Event of Default and endeavor to reach a mutually acceptable resolution thereof. Such a resolution could include, as examples and without limitation:

(i) A waiver of any Default or Event of Default by the Agent and the Lenders;

(ii) A curing of the Default or Event of Default by the Borrowers, or a third party on the Borrowers' behalf;

(iii) An amendment to the provision of the Loan Documents which have been breached so as to resolve the Default or Event of Default;

(iv) An infusion of cash or other equity injection on the Borrowers' behalf; and

(v) Any and all other similar and reasonable methods of addressing and resolving the Default or Event of Default.

(d) In the event that either (i) the good faith negotiations are discontinued, or (ii) the Agent and the Borrowers and any third party involved in such negotiations are unable to reach a mutually acceptable resolution of the Default or Event of Default within Thirty (30) days after the date of the predicating Default, or such longer time as the parties may agree, the Agent may thereupon commence enforcing the Agent's Rights and Remedies as provided in Article 11 without further notice to the Borrowers or any such third party.

**12.5. Limitation on Cure Rights.** The Borrowers further acknowledge and agree that although they may cure successive Financially Curable Defaults and Other Defaults, they shall have no right to cure (i) any Other Defaults which the Agent has determined is not susceptible of being cured and as to which the Agent has not delivered a notice of default specifying the actions and/or payments required to be made in order to cure the subject Other Default, (ii) more than Three (3) Defaults or Events of Default in the aggregate, and (iii) any Default or Event of Default which occurs within Sixty (60) days after the occurrence of any Default or Event of Default which had been cured as provided herein.

**Article 13 Revolving Credit Fundings and Distributions:**

**13.1. Revolving Credit Funding Procedures.** Subject to Section 13.2:

(a) The Agent shall advise each Revolving Credit Lender, no later than 2:00PM on a date on which any Revolving Credit Loan is to be made on that date. Such advice, in each instance, may be by telephone or facsimile transmission, provided that if such advice is by telephone, it shall be confirmed in writing. Advice of a Revolving Credit Loan shall include the amount of and interest rate applicable to the subject Revolving Credit Loan.

(b) Subject to that Revolving Credit Lender's Revolving Credit Dollar Commitment, each Revolving Credit Lender, by no later than the end of business on the day on which the subject Revolving Credit Loan is to be made, shall Transfer that Revolving Credit Lender's Revolving Credit Percentage Commitment of the subject Revolving Credit Loan to the Agent.

**13.2. Agent's Covering of Fundings:**

(a) Each Revolving Credit Lender shall make available to the Agent, as provided herein, that Revolving Credit Lender's Revolving Credit Percentage Commitment of the following:

(i) Each Revolving Credit Loan, up to the maximum amount of that Revolving Credit Lender's Revolving Credit Dollar Commitment of the Revolving Credit Loans.

(ii) Up to the maximum amount of that Revolving Credit Lender's Revolving Credit Dollar Commitment of each L/C Drawing (to the extent that such L/C Drawing is not "covered" by a Revolving Credit Loan as provided herein).

(b) In all circumstances, the Agent may:

(i) Assume that each Revolving Credit Lender, subject to Section 13.3(a), timely shall make available to the Agent that Revolving Credit Lender's Revolving Credit Percentage Commitment of each Revolving Credit Loan, notice of which is provided pursuant to Section 12.1 and shall make available, to the extent not "covered" by a Revolving Credit Loan, that Revolving Credit Lender's Revolving Credit Percentage Commitment of any honoring of an L/C.

(ii) In reliance upon such assumption, make available the corresponding amount to the Borrowers.

(iii) Assume that each Revolving Credit Lender timely shall pay, and shall make available, to the Agent all other amounts which that Revolving Credit Lender is obligated to so pay and/or make available hereunder or under any of the Loan Documents.

(c) In the event that, in reliance upon any of such assumptions, the Agent makes available, a Revolving Credit Lender's Revolving Credit Percentage Commitment of one or more Revolving Credit Loans, or any other amount to be made available hereunder or under any of the Loan Documents, which amount a Revolving Credit Lender (a "**Delinquent Revolving Credit Lender**") fails to provide to the Agent within One (1) Business Day of written notice of such failure, then:

(i) The amount which had been made available by the Agent is an "**Agent's Cover**" (and is so referred to herein).

(ii) All interest paid by the Borrowers on account of the Revolving Credit Loan or coverage of the subject L/C Drawing which consist of the Agent's Cover shall be retained by the Agent until the Agent's Cover, with interest, has been paid.

(iii) The Delinquent Revolving Credit Lender shall pay to the Agent, on demand, interest at a rate equal to the prevailing federal funds rate on any Agent's Cover in respect of that Delinquent Revolving Credit Lender

(iv) The Agent shall have succeeded to all rights to payment to which the Delinquent Revolving Credit Lender otherwise would have been entitled hereunder in respect of those amounts paid by or in respect of the Borrowers on account of the Agent's Cover together with interest until it is repaid. Such payments shall be deemed made first towards the amounts in respect of which the Agent's Cover was provided and only then towards amounts in which the Delinquent Revolving Credit Lender is then participating. For purposes of distributions to be made pursuant to Section 13.3(a) (which relates to ordinary course distributions) or Section 14.6 (which relates to distributions of proceeds of a Liquidation) below, amounts shall be deemed distributable to a Delinquent Revolving Credit Lender (and consequently, to the Agent to the extent to which the Agent is then entitled) at the highest level of distribution (if applicable) at which the Delinquent Revolving Credit Lender would otherwise have been entitled to a distribution.

(v) Subject to Subsection 13.2(c)(iv), the Delinquent Revolving Credit Lender shall be entitled to receive any payments from the Borrowers to which the Delinquent Revolving Credit Lender is then entitled, provided however there shall be deducted from such amount and retained by the Agent any interest to which the Agent is then entitled on account of Section 13.2(c)(ii), above.

(d) A Delinquent Revolving Credit Lender shall not be relieved of any obligation of such Delinquent Revolving Credit Lender hereunder (all and each of which shall constitute continuing obligations on the part of any Delinquent Revolving Credit

Lender).

(e) A Delinquent Revolving Credit Lender may cure its status as a Delinquent Revolving Credit Lender by paying the Agent the aggregate of the following:

(i) The Agent's Cover (to the extent not previously repaid by the Borrowers and retained by the Agent in accordance with Subsection 13.2(c)(iv)), above) with respect to that Delinquent Revolving Credit Lender.

Plus

(ii) The aggregate of the amount payable under Subsection 13.2(c)(iii), above (which relates to interest to be paid by that Delinquent Revolving Credit Lender).

Plus

(iii) All such costs and expenses as may be incurred by the Agent in the enforcement of the Agent's rights against such Delinquent Revolving Credit Lender.

**13.3. Ordinary Course Distributions.** (This Section 13.3 applies unless the provisions of Section 14.6 (which relates to distributions in the event of a Liquidation) becomes operative).

(a) On such day as may be set from time to time by the Agent (or more frequently at the Agent's option) the Agent and each Revolving Credit Lender shall settle up on amounts advanced under the Revolving Credit and collected funds received in the Blocked Account.

(b) The Agent shall distribute to each Revolving Credit Lender, such Person's respective pro-rata share of principal, fees, and interest payments on the Revolving Credit Loans when actually received and collected by the Agent (excluding the One (1) Business Days for settlement provided for in Section 7.3(a), which shall be for the account of the Agent only). For purposes of calculating interest due to a Revolving Credit Lender, that Revolving Credit Lender shall be entitled to receive interest on the actual amount contributed by that Revolving Credit Lender towards the principal balance of the Revolving Credit Loans outstanding during the applicable period covered by the interest payment made by the Borrowers. Any net principal reductions to the Revolving Credit Loans received by the Agent in accordance with the Loan Documents during such period shall not reduce such actual amount so contributed, for purposes of calculation of interest due to that Revolving Credit Lender, until the Agent has distributed to that Revolving Credit Lender its pro-rata share thereof.

(c) No Revolving Credit Lender shall have any interest in, or right to receive any part of any interest which reflects "float" as described in the proviso included in Section7.3(a). Any such float shall be for the account of the Agent only.

(d) No Revolving Credit Lender shall have any interest in, or right to receive any part of, the Agent's Fee to be paid by the Borrowers to the Agent pursuant to this Agreement.

(e) Any amount received by the Agent as reimbursement for any cost or expense (including without limitation, attorneys' reasonable fees) shall be distributed by the Agent to that Person which is entitled to such reimbursement as provided in this Agreement (and if such Person(s) is (are) the Revolving Credit Lenders, pro-rata based upon their respective Revolving Credit Commitment Percentages at the date on which the expense, in respect of which such reimbursement is being made, was incurred).

(f) Each distribution pursuant to this Section 13.3 is subject to Section 13.2(c), above.

**Article 14 Acceleration and Liquidation:**

Subject to and only to the extent permitted by the terms and conditions of the Designation and in compliance with Section 16.5 of the Disney License Agreement:

**14.1. Acceleration Notices**

(a) The Agent may give the Revolving Credit Lenders an Acceleration Notice at any time following the occurrence of an Event of Default.

(b) The SuperMajority Lenders may give the Agent an Acceleration Notice at any time following the occurrence of an Event of Default. Such notice may be by multiple counterparts, provided that counterparts executed by the requisite Revolving Credit Lenders are received by the Agent within a period of five (5) consecutive Business Days.

**14.2. Acceleration.** Unless stayed by judicial or statutory process, the Agent shall Accelerate the Liabilities on account of the Revolving Credit within a commercially reasonable time following:

(a) The Agent's giving of an Acceleration Notice to the Revolving Credit Lenders as provided in Section 14.1(a).

(b) The Agent's receipt of an Acceleration Notice from the SuperMajority Lenders, in compliance with Section 14.1(b).

**14.3. Initiation of Liquidation** Unless stayed by judicial or statutory process, a Liquidation shall be initiated by the Agent within a commercially reasonable time following Acceleration of Liabilities on account of the Revolving Credit. The Agent shall provide written notice of the initiation of any Liquidation to the Walt Disney Companies.

**14.4. Actions At and Following Initiation of Liquidation**

(a) At the initiation of a Liquidation the Agent and the Revolving Credit Lenders shall "net out" each Revolving Credit Lender's respective contributions towards the Revolving Credit Loans, so that each Revolving Credit Lender holds that Revolving Credit Lender's Revolving Credit Percentage Commitment of the Revolving Credit Loans and advances.

(b) Following the initiation of a Liquidation, each Revolving Credit Lender shall contribute, towards any L/C thereafter honored and not immediately reimbursed by the Borrowers, that Revolving Credit Lender's Revolving Credit Percentage Commitment of such honoring.

**14.5. Agent's Conduct of Liquidation**

(a) Any Liquidation shall be conducted by the Agent, with the advice and assistance of the Revolving Credit Lenders.

(b) The Agent may establish one or more Nominees to "bid in" or otherwise acquire ownership to any Post Foreclosure Asset.

(c) The Agent shall manage the Nominee and manage and dispose of any Post Foreclosure Assets with a view towards the realization of the economic benefits of the ownership of the Post Foreclosure Assets and in such regard, the Agent and/or the Nominee may operate, repair, manage, maintain, develop, and dispose of any Post Foreclosure Asset in such manner as the Agent determines as appropriate under the circumstances.

(d) The Agent may decline to undertake or to continue taking a course of action or to execute an action plan (whether proposed by the Agent or any Revolving Credit Lender) unless indemnified to the Agent's satisfaction by the Revolving Credit Lenders against any and all liability and expense which may be incurred by the Agent by reason of taking or continuing to take that course of action or action plan.

(e) Each Revolving Credit Lender shall execute all such instruments and documents not inconsistent with the provisions of this Agreement as the Agent and/or the Nominee reasonably may request with respect to the creation and governance of any Nominee, the conduct of the Liquidation, and the management and disposition of any Post Foreclosure Asset.

(f) The Agent shall provide written notice of the material courses of action undertaken in a Liquidation to the Walt Disney Companies.

**14.6. Distribution of Liquidation Proceeds:**

(a) The Agent may establish one or more reasonably funded reserve accounts into which proceeds of the conduct of any Liquidation may be deposited in anticipation of future expenses which may be incurred by the Agent in the exercise of rights as a secured creditor of the Borrowers and prior claims which the Agent anticipates may need to be paid.

(b) The Agent shall distribute the net proceeds of Liquidation in accordance with the relative priorities set forth in Section 14.7.

(c) Each Revolving Credit Lender, on the written request of the Agent and/or any Nominee, not more frequently than once each month, shall reimburse the Agent and/or any Nominee, Pro-Rata, for any cost or expense reasonably incurred by the Agent and/or the Nominee in the conduct of a Liquidation, which amount is not covered out of current proceeds of the Liquidation, which reimbursement shall be paid over to and distributed by the Agent.

**14.7. Relative Priorities To Proceeds of Liquidation**

(a) All distributions of proceeds of a Liquidation shall be net of payment over to the Agent as reimbursement for all reasonable third party costs and expenses incurred by the Agent and to Lenders' Special Counsel and to any funded reserve established pursuant to Section 14.6(a).

(b) The proceeds of a Liquidation, net of those amounts described in Section 13.2(c)(iv), shall be distributed based on the following priorities:

(i) To the Revolving Credit Lenders (other than any Delinquent Revolving Credit Lender), pro-rata, to those fees distributable hereunder to the Revolving Credit Lenders; and then

(ii) To the Revolving Credit Lenders (other than any Delinquent Revolving Credit Lender), pro-rata, to accrued interest on the Revolving Credit; and then

(iii) To the Revolving Credit Lenders (other than any Delinquent Revolving Credit Lender), pro-rata, to the unpaid principal balance of the Revolving Credit (including amounts necessary to cover any undrawn L/C's); and then

(iv) To any Delinquent Revolving Credit Lenders, pro-rata to amounts to which such Revolving Credit Lenders otherwise would have been entitled pursuant to Sections 14.7(b)(i), 14.7(b)(ii), 14.7(b)(iii); and then

(v) To the Revolving Credit Lenders, pro-rata, to the extent of the Revolving Credit Early Termination Fee; and then

(vi) To any other Liabilities.

**Article 15 The Agent:**

**15.1. Appointment of The Agent**

(a) Each Lender appoints and designates Wells Fargo Retail Finance, LLC as the "Agent" hereunder and under the Loan Documents.

(b) Each Revolving Credit Lender authorizes the Agent:

(i) To execute those of the Loan Documents and all other instruments relating thereto to which the Agent is a party.

(ii) To take such action on behalf of the Revolving Credit Lenders and to exercise all such powers as are expressly delegated to the Agent hereunder and in the Loan Documents and all related documents, together with such other powers as are reasonably incident thereto.

**15.2. Responsibilities of Agent**

(a) The Agent shall not have any duties or responsibilities to, or any fiduciary relationship with, any Revolving Credit Lender except for those expressly set forth in this Agreement.

(b) Neither the Agent nor any of its Affiliates shall be responsible to any Revolving Credit Lender for any of the following:

(i) Any recitals, statements, representations or warranties made by any Borrower or any other Person.

(ii) Any appraisals or other assessments of the assets of any Borrower or of any other Person responsible for or on account of the Liabilities.

(iii) The value, validity, effectiveness, genuineness, enforceability, or sufficiency of the Loan Agreement, the Loan Documents or any other document referred to or provided for therein.

(iv) Any failure by any Borrower or any other Person (other than the Agent) to perform its obligations under the Loan Documents.

(c) The Agent may employ attorneys, accountants, and other professionals and agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such attorneys, accountants, and other professionals or agents or attorneys-in-fact selected by the Agent with reasonable care. No such attorney, accountant, other professional, agent, or attorney-in-fact shall be responsible for any action taken or omitted to be taken by any other such Person.

(d) Neither the Agent, nor any of its directors, officers, or employees shall be responsible for any action taken or omitted to be taken or omitted to be taken by any other of them in connection herewith in reliance upon advice of its counsel nor, in any other event except for any action taken or omitted to be taken as to which a final judicial determination has been or is made (in a proceeding in which such Person has had an opportunity to be heard) that such Person had acted in a grossly negligent manner, in actual bad faith, or in willful misconduct.

(e) The Agent shall not have any responsibility in any event for more funds than the Agent actually receives and collects.

(f) The Agent, in its separate capacity as a Lender, shall have the same rights and powers hereunder as any other Lender.

**15.3. Concerning Distributions By the Agent**

(a) The Agent in the Agent's reasonable discretion based upon the Agent's determination of the likelihood that additional payments will be received, expenses incurred, and/or claims made by third parties to all or a portion of such proceeds, may delay the distribution of any payment received on account of the Liabilities.

(b) The Agent may disburse funds prior to determining that the sums which the Agent expects to receive have been finally and unconditionally paid to the Agent. If and to the extent that the Agent does disburse funds and it later becomes apparent that the Agent did not then receive a payment in an amount equal to the sum paid out, then any Revolving Credit Lender to whom the Agent made the funds available, on demand from the Agent, shall refund to the Agent the sum paid to that person.

(c) If, in the opinion of the Agent, the distribution of any amount received by the Agent might involve the Agent in liability, or might be prohibited hereby, or might be questioned by any Person, then the Agent may refrain from making distribution until the Agent's right to make distribution has been adjudicated by a court of competent jurisdiction.

(d) The proceeds of any Revolving Credit Lender's exercise of any right of, or in the nature of, set-off shall be deemed, First, to the extent that a Revolving Credit Lender is entitled to any distribution hereunder, to constitute such distribution and Second, shall be shared with the other Revolving Credit Lenders as if distributed pursuant to (and shall be deemed as distributions under) Section 14.7.

(e) Each Revolving Credit Lender recognizes that the crediting of the Borrowers with the "proceeds" of any transaction in which a Post Foreclosure Asset is acquired is a non-cash transaction and that, in consequence, no distribution of such "proceeds" will be made by the Agent to any Lender.

(f) In the event that (x) a court of competent jurisdiction shall adjudge that any amount received and distributed by the Agent is to be repaid or disgorged or (y) those Lenders adversely affected thereby determine to effect such repayment or disgorgement, then each Revolving Credit Lender to which any such distribution shall have been made shall repay, to the Agent which had made such distribution, that Revolving Credit Lender's Pro-Rata share of the amount so adjudged or determined to be repaid or disgorged.

**15.4. Dispute Resolution:** Any dispute among the Revolving Credit Lenders and/or the Agent concerning the interpretation, administration, or enforcement of the financing arrangements contemplated by this or any other Loan Document or the interpretation or administration of this or any other Loan Document which cannot be resolved amicably shall be resolved in the United States District Court for the District of Massachusetts, sitting in Boston or in the Superior Court of Suffolk County, Massachusetts, to the jurisdiction of which courts each Revolving Credit Lender hereto hereby submits.

**15.5. Distributions of Notices and Other Documents** The Agent will forward to each Revolving Credit Lender, promptly after the Agent's receipt thereof, a copy of each notice or other document furnished to the Agent pursuant to this Agreement, including monthly, quarterly, and annual financial statements received from the Lead Borrower pursuant to Article 4.28 of this Agreement, other than any of the following:

(a) Routine communications associated with requests for Revolving Credit Loans and/or the issuance of L/C's.

(b) Routine or nonmaterial communications.

(c) Any notice or document required by any of the Loan Documents to be furnished to the Revolving Credit Lenders by the Lead Borrower.

(d) Any notice or document of which the Agent has knowledge that such notice or document had been forwarded to the Revolving Credit Lenders other than by the Agent.

**15.6. Confidential Information**

(a) Each Revolving Credit Lender and any Participant will maintain, as confidential, all of the following:

(i) Proprietary approaches, techniques, and methods of analysis which are applied by the Agent in the administration of the credit facility contemplated by this Agreement.

(ii) Proprietary forms and formats utilized by the Agent in providing reports to the Revolving Credit Lenders pursuant hereto, which forms or formats are not of general currency.

(iii) The results of financial examinations, reviews, inventories, analysis, appraisals, and other information concerning, relating to, or in respect of any Borrower and prepared by or at the request of, or furnished to any of, the Revolving Credit Lenders by or on behalf of the Agent.

(iv) None of the Agent or the Revolving Credit Lenders shall in any manner whatsoever, directly or indirectly, disclose any confidential information (including without limitation any of the Licensed Materials, as defined in the Disney License Agreement) of the Disney Companies to any Person.

(b) Nothing included herein shall prohibit the disclosure of any such information as may be required to be provided by judicial process or by regulatory authorities having jurisdiction over any party to this Agreement.

**15.7. Reliance by Agent** The Agent shall be entitled to rely upon any certificate, notice or other document (including any cable, telegram, telex, or facsimile) reasonably believed by the Agent to be genuine and correct and to have been signed or sent by or on behalf of the proper person or persons, and upon advice and statements of attorneys, accountants and other experts selected by the Agent. As to any matters not expressly provided for in this Agreement, any Loan Document, or in any other document referred to therein, the Agent shall in all events be fully protected in acting, or in refraining from acting, in accordance with the applicable Consent required by this Agreement. Instructions given with the requisite Consent shall be binding on all Revolving Credit Lenders.

**15.8. Non-Reliance on Agent and Other Revolving Credit Lenders**

(a) Each Revolving Credit Lender represents to all other Revolving Credit Lenders and to the Agent that such Revolving Credit Lender:

(i) Independently and without reliance on any representation or act by Agent or by any other Revolving Credit Lender, and based on such documents and information as that Revolving Credit Lender has deemed appropriate, has made such Revolving Credit Lender's own appraisal of the financial condition and affairs of the Borrowers and decision to enter into this Agreement.

(ii) Has relied upon that Revolving Credit Lender's review of the Loan Documents by that Revolving Credit Lender and by counsel to that Revolving Credit Lender as that Revolving Credit Lender deemed appropriate under the circumstances.

(b) Each Revolving Credit Lender agrees that such Revolving Credit Lender, independently and without reliance upon Agent or any other Revolving Credit Lender, and based upon such documents and information as such Revolving Credit Lender shall deem appropriate at the time, will continue to make such Revolving Credit Lender's own appraisals of the financial condition and affairs of the Borrowers when determining whether to take or not to take any discretionary action under this Agreement.

(c) The Agent, in the discharge of that Agent's duties hereunder, shall not

(i) Be required to make inquiry of, or to inspect the properties or books of, any Person.

(ii) Have any responsibility for the accuracy or completeness of any financial examination, review, inventory, analysis, appraisal, and other information concerning, relating to, or in respect of any Borrower and prepared by or at the request of, or furnished to any of, the Revolving Credit Lenders by or on behalf of the Agent.

(d) Except for notices, reports, and other documents and information expressly required to be furnished to the Revolving Credit Lenders by the Agent hereunder (as to which, see Section 15.5), the Agent shall not have any affirmative duty or responsibility to provide any Lender with any credit or other information concerning any Person, which information may come into the possession of Agent or any Affiliate of the Agent.

(e) Each Revolving Credit Lender, at such Revolving Credit Lender's request, shall have reasonable access to all nonprivileged documents in the possession of the Agent, which documents relate to the Agent's performance of its duties hereunder.

**15.9. Indemnification** Without limiting the liabilities of the Borrowers under any this or any of the other Loan Documents, each Revolving Credit Lender shall indemnify the Agent, Pro-Rata, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including attorneys' reasonable fees and expenses and other out-of-pocket expenditures) which may at any time be imposed on, incurred by, or asserted against the Agent and in any way relating to or arising out of this Agreement or any other Loan Document or any documents contemplated by or referred to therein or the transactions contemplated thereby or the enforcement of any of terms hereof or thereof or of any such other documents, provided, however, no Revolving Credit Lender shall be liable for any of the foregoing to the extent that any of the foregoing arises from any action taken or omitted to be taken by the Agent as to which a final judicial determination has been or is made (in a proceeding in which the Agent has had an opportunity to be heard) that the Agent had acted in a grossly negligent manner, in actual bad faith, or in willful misconduct.

**15.10. Resignation of Agent**

(a) The Agent may resign at any time by giving 60 days prior written notice thereof to the Revolving Credit Lenders. Upon receipt of any such notice of resignation, the SuperMajority Lenders shall have the right to appoint a successor to such Agent (and if no Event of Default has occurred, with the consent of the Lead Borrower, not to be unreasonably withheld and, in any event, deemed given by the Lead Borrower if no written objection is provided by the Lead Borrower to the (resigning) Agent within seven (7) Business Days notice of such proposed appointment). If a successor Agent shall not have been so appointed and accepted such appointment within 30 days after the giving of notice by the resigning Agent, then the resigning Agent may appoint a successor

Agent, which shall be a financial institution having a combined capital and surplus in excess of $100 Million. The consent of the Lead Borrower otherwise required by this Section 15.10(a) shall not be required if an Event of Default has occurred.

(b) Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor shall thereupon succeed to, and become vested with, all the rights, powers, privileges, and duties of the (resigning) Agent so replaced, and the (resigning) Agent shall be discharged from the (resigning) Agent's duties and obligations hereunder, other than on account of any responsibility for any action taken or omitted to be taken by the (resigning) Agent as to which a final judicial determination has been or is made (in a proceeding in which the (resigning) Person has had an opportunity to be heard) that such Person had acted in a grossly negligent manner or in bad faith.

(c) After any retiring Agent's resignation, the provisions of this Agreement and of all other Loan Documents shall continue in effect for the retiring Person's benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

**15.11. Documentation Agent; Co-Agent.** Notwithstanding the provisions of this Agreement or any of the other Loan Documents, Congress Financial Corporation (New England) (in its capacity as Documentation Agent, as opposed to its capacity as a Revolving Credit Lender), and LaSalle Retail Finance, a division of LaSalle Business Credit LLC (in its capacity as Co-Agent, as opposed to its capacity as a Revolving Credit Lender) shall have no powers, rights, duties, responsibilities, or liabilities with respect to this Agreement and the other Loan Documents, nor shall Congress Financial Corporation (New England) or LaSalle Retail Finance, a division of LaSalle Business Credit LLC, have or be deemed to have any fiduciary relationship with any Lender.

**Article 16 Action By Agents - Consents - Amendments - Waivers:**

**16.1. Administration of Credit Facilities**

(a) Except as otherwise specifically provided in this Agreement, the Agent may take any action with respect to the credit facility contemplated by the Loan Documents as the Agent determines to be appropriate , provided, however, the Agent is not under any affirmative obligation to take any action which it is not required by this Agreement or the Loan Documents specifically to so take.

(b) Except as specifically provided in the following Sections of this Agreement, whenever a Loan Document or this Agreement provides that action may be taken or omitted to be taken in an Agent's discretion, the Agent shall have the sole right to take, or refrain from taking, such action without, and notwithstanding, any vote of the Revolving Credit Lender:

| Actions Described in Section | Type of Consent Required |
|---|---|
| 16.2 | Majority Lenders |
| 16.3 | SuperMajority Lenders |
| 16.4 | Certain Consent |
| 16.5 | Unanimous Consent |
| 16.6 | Consent of the Agent |

(c) The rights granted to the Revolving Credit Lenders in those sections referenced in Section 16.1(b) shall not otherwise limit or impair the Agent's exercise of its discretion under the Loan Documents.

**16.2. Actions Requiring or On Direction of Majority Lenders** Except as otherwise provided in this Agreement, the Consent or direction of the Majority Lenders is required for any amendment, waiver, or modification of any Loan Document.

**16.3. Actions Requiring or On Direction of SuperMajority Lenders** The Consent or direction of the SuperMajority Lenders is required as follows:

(a) The SuperMajority Lenders may direct the Agent to require the prompt repayment of Protective OverAdvances that have been outstanding for more than Sixty (60) consecutive Business Days (the Revolving Credit Lenders recognizing that, except as described in this Section 16.3(a), any loan or advance under the Revolving Credit which results in a Protective OverAdvance may be made by the Agent in its discretion without the Consent of the Revolving Credit Lenders and that each Revolving Credit Lender shall be bound thereby.

(b) The SuperMajority Lenders may direct the Agent to suspend the Revolving Credit (including the making of any Protective OverAdvances), if any Borrower is then In Default, following which direction, and for as long as a Borrower is In Default, the only Revolving Credit Loans which may be made are the following:

(i) Protective OverAdvances not otherwise terminated as provided in 16.3(a).

(ii) Revolving Credit Loans made to "cover" the honoring of L/C's.

(iii) Revolving Credit Loans made with Consent of the SuperMajority Lenders.

(c) The SuperMajority Lenders may undertake the following if an Event of Default has occurred and not been duly waived, :

(i) Give the Agent an Acceleration Notice in accordance with Section 14.1(b).

(ii) Direct the Agent to increase the rate of interest to the default rate of interest as provided in, and to the extent permitted by, this Agreement.

**16.4. Action Requiring Certain Consent** The Consent or direction of the following is required for the following actions:

(a) Any forgiveness of all or any portion of any payment Liability: All Lenders whose payment Liability is being so forgiven: (other than any Delinquent Revolving Credit Lender).

(b) Any decrease in any interest rate or fee payable under any of the Loan Documents (other than any fee payable to the Agent (for which the consent of the Agent shall be required): Any Lenders adversely affected thereby (other than any Delinquent Revolving Credit Lender).

(c) Any waiver, amendment, or modification which has the effect of increasing any Revolving Credit Dollar Commitment or Revolving Credit Percentage Commitment shall be subject to the Consent of all Revolving Credit Lenders (other than any Delinquent Revolving Credit Lender) except that no Consent shall be required for any such increase which is the result of the application of the following Sections of this Agreement:

(i) Section 16.9 (which relates to NonConsenting Revolving Credit Lenders).

(ii) Section 17.1 (which relates to assignments and assumptions).

(d) Volitional Disgorgement as described in 15.3(f): Each Lender (other than any Delinquent Revolving Credit Lender) which is adversely affected thereby.

**16.5. Actions Requiring or Directed By Unanimous Consent** None of the following may take place except with Unanimous Consent:

(a) Any release of a material portion of the Collateral, but such Consent to such release is not required if any of the following conditions is satisfied:

(i) Such release is otherwise required or provided for in the Loan Documents.

(ii) Such release is being made to facilitate a Liquidation.

(iii) No OverLoan exists immediately after giving effect to the application to the Loan Account of the net proceeds received on account of the transaction in which such release is made.

(b) Any affirmative subordination of the Liabilities to any material obligation of any Borrower, unless such subordination is otherwise required pursuant to, or is permitted by this Agreement.

(a) Any amendment of the Definitions of "Borrowing Base" or "Availability" or of any Definition of any component thereof, such that more credit would be available to the Borrowers, based on the same assets, as would have been available to the Borrowers immediately prior to such amendment , it being understood, however, that:

(i) The foregoing shall not limit the adjustment by the Agent of any reserve in the Agent's administration of the Revolving Credit as otherwise permitted by this Agreement.

(ii) The foregoing shall not prevent the Agent, in its administration of the Revolving Credit, from restoring any component of Borrowing Base which had been lowered by the Agent back to the value of such component, as stated in this Agreement or to an intermediate value.

(iii) The amendment of any financial performance covenant to which direct or indirect reference is made in the Definition of "Availability" or "Borrowing Base" or in the Definition of any component thereof shall be subject to amendment as otherwise provided in this Agreement (and by Consent of the Majority Lenders if not subject to any other specific provision of this Agreement).

(b) Any release of any Person obligated on account of the Liabilities.

(c) Any amendment or modification to the date on which any payment of principal, interest, fees, or other Liabilities are to be paid, including any extension of the Maturity Date.

(d) The making of any Revolving Credit Loan which, when made, exceeds Availability and is not a Protective OverAdvance, subject, however, to the following:

(i) No Consent is required in connection with the making of any Revolving Credit Loan to "cover" any honoring of a drawing under any L/C.

(ii) Each Lender recognizes that subsequent to the making of a Revolving Credit Loan which does not constitute a Protective OverAdvance, the unpaid principal balance of the Loan Account may exceed Borrowing Base on account of changed circumstances beyond the control of the Agent (such as a drop in collateral value).

(e) Any amendment which has the effect of limiting the Agent's right or ability to make Protective OverAdvances.

(f) The waiver of the obligation of the Borrowers to reduce the unpaid principal balance of loans under the Revolving Credit to an amount so that no OverLoan (other than a Protective OverAdvance) is outstanding.

(g) Any amendment of Section 7.2(b).

(h) Any amendment of Section 14.7.

(i) Any amendment of this Article 16.

(j) Amendment of any of the following Definitions:

"Majority Lender"

"Protective OverAdvance"

"SuperMajority Lenders

"Unanimous Consent"

**16.6. Actions Requiring Agent's Consent.** No action, amendment, or waiver of compliance with, any provision of the Loan Documents or of this Agreement which affects the Agent in its capacity as Agent may be undertaken without the written consent of the Agent.(b) No action referenced herein which affects the rights, duties, obligations, or liabilities of the Agent shall be effective without the written consent of the Agent.

**16.7. Miscellaneous Actions**

(a) Notwithstanding any other provision of this Agreement, no single Revolving Credit Lender independently may exercise any right of action or enforcement against or with respect to any Borrower.

(b) The Agent shall be fully justified in failing or refusing to take action under this Agreement or any Loan Document on behalf of any Revolving Credit Lender unless the Agent shall first

(i) receive such clear, unambiguous, written instructions as the Agent deems appropriate; and

(ii) be indemnified to the Agent's satisfaction by the Revolving Credit Lenders against any and all liability and expense which may be incurred by the Agent by reason of taking or continuing to take any such action, unless such action had been grossly negligent, in willful misconduct, or in bad faith.

(c) The Agent may establish reasonable procedures for the providing of direction and instructions from the Revolving Credit Lenders to the Agent, including its reliance on multiple counterparts, facsimile transmissions, and time limits within which such direction and instructions must be received in order to be included in a determination of whether the requisite Lenders have provided their direction, Consent, or instructions.

**16.8. Actions Requiring Lead Borrower's Consent** The Lead Borrower's consent is required for any amendment of this Agreement, except that each of the following Articles of this Agreement may be amended without the consent of the Lead Borrower:

| Article | Title of Article |
|---|---|
| 12 | Revolving Credit Fundings and Distributions |

**16.9. NonConsenting Revolving Credit Lender**

(a) In the event that a Revolving Credit Lender (in this Section 16.9, a "**NonConsenting Revolving Credit Lender**") does not provide its Consent to a proposal by the Agent to take action which requires consent under this Article 15, then one or more Revolving Credit Lenders who provided Consent to such action may require the assignment, without recourse and in accordance with the procedures outlined in Section 17.1, below, of the NonConsenting Revolving Credit Lender's commitment hereunder on fifteen (15) days written notice to the Agent and to the NonConsenting Revolving Credit Lender.

(b) At the end of such fifteen (15) days, and provided that the NonConsenting Revolving Credit Lender delivers the Revolving Credit Note held by the NonConsenting Revolving Credit Lender to the Agent, the Revolving Credit Lenders who have given such written notice shall Transfer the following to the NonConsenting Revolving Credit Lender:

(i) Such NonConsenting Revolving Credit Lender's Pro-Rata share of the principal and interest of the Revolving Credit Loans to the date of such assignment.

(ii) All fees distributable hereunder to the NonConsenting Revolving Credit Lender to the date of such assignment.

(iii) Any out-of-pocket costs and expenses for which the NonConsenting Revolving Credit Lender is entitled to reimbursement from the Borrowers.

(c) In the event that the NonConsenting Revolving Credit Lender fails to deliver to the Agent the Revolving Credit Note held by the NonConsenting Revolving Credit Lender as provided in Section 16.9(b) (other than as a result of the subject Revolving Credit Note having been lost or destroyed, in which event an appropriate lost note affidavit and indemnity shall suffice), then:

(i) The amount otherwise to be Transferred to the NonConsenting Revolving Credit Lender shall be Transferred to the Agent and held by the Agent, without interest, to be turned over to the NonConsenting Revolving Credit Lender upon delivery of the Revolving Credit Note held by that NonConsenting Revolving Credit Lender.

(ii) The Revolving Credit Note held by the NonConsenting Revolving Credit Lender shall have no force or effect whatsoever.

(iii) The NonConsenting Revolving Credit Lender shall cease to be a "Revolving Credit Lender".

(iv) The Revolving Credit Lender(s) which have Transferred the amount to the Agent as described above shall have succeeded to all rights and become subject to all of the obligations of the NonConsenting Revolving Credit Lender as "Revolving Credit Lender".

(d) In the event that more than One (1) Revolving Credit Lender wishes to require such assignment, the NonConsenting Revolving Credit Lender's commitment hereunder shall be divided among such Revolving Credit Lenders, pro-rata based upon their respective Revolving Credit Percentage Commitments, with the Agent coordinating such transaction.

(e) The Agent shall coordinate the retirement of the Revolving Credit Note held by the NonConsenting Revolving Credit Lender and the issuance of Revolving Credit Notes to those Revolving Credit Lenders which "take-out" such NonConsenting Revolving Credit Lender, provided, however, no processing fee otherwise to be paid as provided in Section 17.2(b) shall be due under such circumstances.

**Article 17 Assignments By Revolving Credit Lenders:**

**17.1. Assignments and Assumptions:**

(a) Except as provided herein, each Revolving Credit Lender (in this Section 17.1(a), an "**Assigning Revolving Credit Lender**") may assign to one or more Eligible Assignees (in this Section 17.1(a), each an "**Assignee Revolving Credit Lender**") all or a portion of that Revolving Credit Lender's interests, rights and obligations under this Agreement and the Loan Documents (including all or a portion of its Commitment) and the same portion of the Revolving Credit Loans at the time owing to it, and of the Revolving Credit Note held by the Assigning Revolving Credit Lender, provided that:

(i) The Agent shall have given its prior written consent to such assignment, which consent shall not be unreasonably withheld, but need not be given if the proposed assignment would result in any resulting Revolving Credit Lender's having a Dollar Commitment of less than the "minimum hold" amount specified in Section 17.1(a)(iv) or if there would be more than Three (3) Revolving Credit Lenders.

(ii) So long as no Default or Event of Default then exists, the Lead Borrower shall have given its prior written consent to such assignment, which consent shall not be unreasonably withheld.

(iii) Each such assignment shall be of a constant, and not a varying, percentage of all the Assigning Revolving Credit Lender's rights and obligations under this Agreement.

(iv) Following the effectiveness of such assignment, the Assigning Revolving Credit Lender's Dollar Commitment (if not an assignment of all of the Assigning Revolving Credit Lender's Commitment) shall not be less than $5,000,000.00.

(v) Anything contained herein to the contrary notwithstanding, the consent of the Agent shall not be required (and payment of any fees shall not be required) if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of such Assigning Revolving Credit Lender.

**17.2. Assignment Procedures.** (This Section 17.2 describes the procedures to be followed in connection with an assignment effected pursuant to this Article 17 and permitted by Section 17.1).

(a) The parties to such an assignment shall execute and deliver to the Agent, for recording in the Register, an **Assignment and Acceptance** substantially in the form of **EXHIBIT 16.1**, annexed hereto.

(b) The Assigning Revolving Credit Lender shall deliver to the Agent, with such Assignment and Acceptance, the Revolving Credit Note held by the subject Assigning Revolving Credit Lender and the Agent's processing fee of $2,500.00, provided, however, no such processing fee shall be due where the Assigning Revolving Credit Lender is one of the Revolving Credit Lenders at the initial execution of this Agreement.

(c) The Agent shall maintain a copy of each Assignment and Acceptance delivered to it and a register or similar list (the **"Register"**) for the recordation of the names and addresses of the Revolving Credit Lenders and of the Revolving Credit Percentage Commitment and Revolving Credit Percentage Commitment of each Revolving Credit Lender. The Register shall be available for inspection by the Revolving Credit Lenders at any reasonable time and from time to time upon reasonable prior notice. In the absence of manifest error, the entries in the Register shall be conclusive and binding on all Revolving Credit Lenders. The Agent and the Revolving Credit Lenders may treat each Person whose name is recorded in the Register as a "Revolving Credit Lender" hereunder for all purposes of this Agreement.

(d) The Assigning Revolving Credit Lender and Assignee Revolving Credit Lender, directly between themselves, shall make all appropriate adjustments in payments for periods prior to the effective date of an Assignment and Assumption.

**17.3. Effect of Assignment.**

(a) From and after the effective date specified in an Assignment and Acceptance which has been executed, delivered, and recorded (which effective date the Agent may delay by up to Five (5) Business Days after the delivery of such Assignment and Acceptance):

(i) The Assignee Revolving Credit Lender:

(A) Shall be a party to this Agreement and the Loan Documents (and to any amendments thereof) as fully as if the Assignee Revolving Credit Lender had executed each.

(B) Shall have the rights of a Revolving Credit Lender hereunder to the extent of the Revolving Credit Percentage Commitment and Revolving Credit Percentage Commitment assigned by such Assignment and Acceptance.

(ii) The Assigning Revolving Credit Lender shall be released from the Assigning Revolving Credit Lender's obligations under this Agreement and the Loan Documents to the extent of the Commitment assigned by such Assignment and Acceptance.

(iii) The Agent shall undertake to obtain and distribute replacement Revolving Credit Notes to the subject Assigning Revolving Credit Lender and Assignee Revolving Credit Lender.

(b) By executing and delivering an Assignment and Acceptance, the parties thereto confirm to and agree with each other and with all parties to this Agreement as to those matters which are set forth in the subject Assignment and Acceptance.

**Article 18 Notices:**

**18.1. Notice Addresses.** All notices, demands, and other communications made in respect of any Loan Document (other than a request for a loan or advance or other financial accommodation under the Revolving Credit) shall be made to the following addresses, each of which may be changed upon seven (7) days written notice to all others given by certified mail, return receipt requested:

If to the Agent:

Wells Fargo Retail Finance, LLC
One Boston Place - - 18th Floor
Boston, Massachusetts 02108
Attention : David Molinario
Vice President
Fax : 617-523-4029

With a copy to:

Riemer & Braunstein LLP
Three Center Plaza
Boston, Massachusetts 02108
Attention : Donald E. Rothman, Esquire
Fax : 617-880-3456

If to the Lead Borrower and all Borrowers:

The Disney Store, LLC
c/o The Children's Place Retail Stores, Inc.
915 Secaucus Road
Secaucus, New Jersey 07049
Attention : Chief Financial Officer
Fax : 201-558-2847

With a copy to:

The Children's Place Stores, Inc.
915 Secaucus Road
Secaucus, New Jersey 07094
Attention : Chief Financial Officer
Fax : 201-558-2837

With a copy to:

Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038-4928
Attention : Jeffrey Lowental, Esq.
Fax : 212-806-6006

**18.2. Notice Given.**

(a) Except as otherwise specifically provided herein, notices shall be deemed made and correspondence received, as follows (all times being local to the place of delivery or receipt):

(i) By mail: the sooner of when actually received or Three (3) days following deposit in the United States mail, postage prepaid.

(ii) By recognized overnight express delivery: the Business Day following the day when sent.

(iii) By Hand: If delivered on a Business Day after 9:00 AM and no later than Three (3) hours prior to the close of customary business hours of the recipient, when delivered. Otherwise, at the opening of the then next Business Day.

(iv) By Facsimile transmission (which must include a header on which the party sending such transmission is indicated): If sent on a Business Day after 9:00 AM and no later than Three (3) hours prior to the close of customary business hours of the recipient, one (1) hour after being sent. Otherwise, at the opening of the then next Business Day.

(b) Rejection or refusal to accept delivery and inability to deliver because of a changed address or Facsimile Number for which no due notice was given shall each be deemed receipt of the notice sent.

**18.3. Wire Instructions.** Notice Given. Subject to change in the same manner that a notice address may be changed (as to which, see Section 18.1), wire transfers to the Agent shall be made in accordance with the following wire instructions:

Wells Fargo Bank
San Francisco, CA
ABA # 121-000-248
Wells Fargo Retail Finance, LLC
Account Number - 4945088607
: Disney Stores N. A., Inc.

**Article 19 Term:**

**19.1. Termination of Revolving Credit.** The Revolving Credit shall remain in effect (subject to suspension as provided in Section 2.6 hereof) until the Termination Date.

**19.2. Actions On Termination.**

(a) On the Termination Date, the Borrowers shall pay the Agent (whether or not then due), in immediately available funds, all then Liabilities including, without limitation: the following:

(i) The entire balance of the Loan Account (including the unpaid principal balance of the Revolving Credit Loans).

(ii) Any payments due on account of the indemnification obligations included in Section 2.10(e).

(iii) Any remaining installment of the Revolving Credit Closing Fee.

(iv) Any accrued and unpaid Unused Line Fee.

(v) Any applicable Revolving Credit Early Termination Fee.

(vi) All unreimbursed costs and expenses of the Agent and of Lenders' Special Counsel for which each Borrower is responsible.

(vii) All other Liabilities.

(b) On the Termination Date, the Borrowers shall also shall make such arrangements concerning any L/C's and any Bank Products and Bank Product Obligations then outstanding as are reasonably satisfactory to the Agent.

(c) Until such payment (Section 19.2(a)) and arrangements concerning L/C's, Bank Products, and Bank Product Obligations (Section 19.2(b)), all provisions of this Agreement, other than those included in Article 2 which place any obligation on the Agent or any Revolving Credit Lender to make any loans or advances or to provide any financial accommodations to any Borrower shall remain in full force and effect until all Liabilities shall have been paid in full.

(d) The release by the Agent of the Collateral Interests granted the Agent by the Borrowers hereunder may be upon such conditions and indemnifications as the Agent may require.

**Article 20 General:**

**20.1. Protection of Collateral.** The Agent has no duty as to the collection or protection of the Collateral beyond the safe custody of such of the Collateral as may come into the possession of the Agent.

**20.2. Publicity.** The Agent may issue a "tombstone" notice of the establishment of the credit facility contemplated by this Agreement and may make reference to each Borrower (and may utilize any logo or other distinctive symbol associated with each Borrower) in connection with any advertising, promotion, or marketing (including reference in any "case study" of the creditor facility contemplated hereby) undertaken by the Agent.

**20.3. Successors and Assigns.** This Agreement shall be binding upon the Borrowers and their respective representatives, successors, and assigns and shall inure to the benefit of the Agent and each Revolving Credit Lender and their respective successors and assigns, provided, however, no trustee or other fiduciary appointed with respect to any Borrower shall have any rights hereunder. In the event that the Agent or any Revolving Credit Lender assigns or transfers its rights under this Agreement, the assignee shall thereupon succeed to and become vested with all rights, powers, privileges, and duties of such assignor hereunder and such assignor shall thereupon be discharged and relieved from its duties and obligations hereunder.

**20.4. Severability.** Any determination that any provision of this Agreement or any application thereof is invalid, illegal, or unenforceable in any respect in any instance shall not affect the validity, legality, or enforceability of such provision in any other instance, or the validity, legality, or enforceability of any other provision of this Agreement.

**20.5. Amendments. Course of Dealing.**

(a) This Agreement and the other Loan Documents incorporate all discussions and negotiations between each Borrower and the Agent and each Revolving Credit Lender, either express or implied, concerning the matters included herein and in such other instruments, any custom, usage, or course of dealings to the contrary notwithstanding. No such discussions, negotiations, custom, usage, or course of dealings shall limit, modify, or otherwise affect the provisions thereof. No failure by the Agent or any Revolving Credit Lender to give notice to the Lead Borrower of any Borrower's having failed to observe and comply with any warranty or covenant included in any Loan Document shall constitute a waiver of such warranty or covenant or the amendment of the subject Loan Document. No change made by the Agent to the manner by which Borrowing Base is determined shall obligate the Agent to continue to determine Borrowing Base in that manner.

(b) Each Borrower may undertake any action otherwise prohibited hereby, and may omit to take any action otherwise required hereby, upon and with the express prior written consent of the Agent. Subject to Article 15, no consent, modification, amendment, or waiver of any provision of any Loan Document shall be effective unless executed in writing by or on behalf of the party to be charged with such modification, amendment, or waiver (and if such party is the Agent then by a duly authorized officer thereof). Any modification, amendment, or waiver provided by the Agent shall be in reliance upon all representations and warranties theretofore made to the Agent by or on behalf of the Borrowers (and any guarantor, endorser, or surety of the Liabilities) and consequently may be rescinded in the event that any of such representations or warranties was not true and complete in all material respects when given.

**20.6. Power of Attorney.** In connection with all powers of attorney included in this Agreement, each Borrower hereby grants unto the Agent (acting through any of its officers) full power to do any and all things necessary or appropriate in connection with the exercise of such powers as fully and effectually as that Borrower might or could do, hereby ratifying all that said attorney shall do or cause to be done by virtue of this Agreement. No power of attorney set forth in this Agreement shall be affected by any disability or incapacity suffered by any Borrower and each shall survive the same. All powers conferred upon the Agent by this Agreement, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a written instrument executed by a duly authorized officer of the Agent.

**20.7. Application of Proceeds.** The proceeds of any collection, sale, or disposition of the Collateral, or of any other payments received hereunder, shall be applied towards the Liabilities in such order and manner as the Agent determines in its sole discretion, consistent, however, with Sections 14.6 and 14.7 and any other applicable provisions of this Agreement. The Borrowers shall remain liable for any deficiency remaining following such application.

**20.8. Increased Costs.** If, as a result of any Requirement of Law, or of the interpretation or application thereof by any court or by any governmental or other authority or entity charged with the administration thereof, whether or not having the force of law, which:

(a) subjects any Revolving Credit Lender to any taxes or changes the basis of taxation, or increases any existing taxes, on payments of principal, interest or other amounts payable by any Borrower to the Agent or any Revolving Credit Lender under this Agreement (except for taxes on the Agent or any Revolving Credit Lender based on net income or capital imposed by the jurisdiction in which the principal or lending offices of the Agent or that Revolving Credit Lender are located);

(b) imposes, modifies or deems applicable any reserve, cash margin, special deposit or similar requirements against assets held by, or deposits in or for the account of or loans by or any other acquisition of funds by the relevant funding office of any Revolving Credit Lender;

(c) imposes on any Revolving Credit Lender any other condition with respect to any Loan Document; or

(d) imposes on any Revolving Credit Lender a requirement to maintain or allocate capital in relation to the Liabilities;

and the result of any of the foregoing, in such Revolving Credit Lender’s reasonable opinion, is to increase the cost to that Revolving Credit Lender of making or maintaining any loan, advance or financial accommodation or to reduce the income receivable by that Revolving Credit Lender in respect of any loan, advance or financial accommodation by an amount which that Revolving Credit Lender deems to be material, then upon written notice from the Agent, from time to time, to the Lead Borrower (such notice to set out in reasonable detail the facts giving rise to and a summary calculation of such increased cost or reduced income), the Borrowers shall forthwith pay to the Agent, for the benefit of the subject Revolving Credit Lender, upon receipt of such notice, that amount which shall compensate the subject Revolving Credit Lender for such additional cost or reduction in income.

**20.9. Costs and Expenses of the Agent.**

(a) The Borrowers shall pay from time to time on demand all Costs of Collection and all reasonable costs, expenses, and disbursements (including attorneys' reasonable fees and expenses) which are incurred by the Agent in connection with the preparation, negotiation, execution, and delivery of this Agreement and of any other Loan Documents, and all other reasonable

costs, expenses, and disbursements which may be incurred in connection with or in respect to the credit facility contemplated hereby or which otherwise are incurred with respect to the Liabilities.

(b) The Borrowers shall pay from time to time on demand all reasonable costs and expenses (including attorneys' reasonable fees and expenses) incurred, following the occurrence of any Event of Default, by the Revolving Credit Lenders to Lenders' Special Counsel.

(c) Each Borrower authorizes the Agent to pay all such fees and expenses and in the Agent's discretion, to add such fees and expenses to the Loan Account.

(d) The undertaking on the part of each Borrower in this Section 20.9 shall survive payment of the Liabilities and/or any termination, release, or discharge executed by the Agent in favor of any Borrower, other than a termination, release, or discharge which makes specific reference to this Section 20.9.

**20.10. Copies and Facsimiles.** Each Loan Document and all documents and papers which relates thereto which have been or may be hereinafter furnished the Agent or any Revolving Credit Lender may be reproduced by that Revolving Credit Lender or by the Agent by any photographic, microfilm, xerographic, digital imaging, or other process, and such Person making such reproduction may destroy any document so reproduced. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business). Any facsimile which bears proof of transmission shall be binding on the party which or on whose behalf such transmission was initiated and likewise shall be so admissible in evidence as if the original of such facsimile had been delivered to the party which or on whose behalf such transmission was received.

**20.11. Massachusetts Law.** This Agreement and all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the law of The Commonwealth of Massachusetts.

**20.12. Consent to Jurisdiction.**

(a) Each Borrower agrees that any legal action, proceeding, case, or controversy against any Borrower with respect to any Loan Document may be brought in the Superior Court of Suffolk County Massachusetts or in the United States District Court, District of Massachusetts, sitting in Boston, Massachusetts, as the Agent may elect in the Agent's sole discretion. By execution and delivery of this Agreement, each Borrower, for itself and in respect of its property, accepts, submits, and consents generally and unconditionally, to the jurisdiction of the aforesaid courts.

(b) Each Borrower WAIVES personal service of any and all process upon it, and irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by certified mail, postage prepaid, to the Lead Borrower at the Lead Borrower's address for notices as specified herein, such service to become effective five (5) Business Days after such mailing.

(c) Each Borrower WAIVES any objection based on forum non conveniens and any objection to venue of any action or proceeding instituted under any of the Loan Documents and consents to the granting of such legal or equitable remedy as is deemed appropriate by the Court.

(d) Nothing herein shall affect the right of the Agent to bring legal actions or proceedings in any other competent jurisdiction.

(e) Each Borrower agrees that any action commenced by any Borrower asserting any claim arising under or in connection with this Agreement or any other Loan Document shall be brought solely in the Superior Court of Suffolk County Massachusetts or in the United States District Court, District of Massachusetts, sitting in Boston, Massachusetts, and that such Courts shall have exclusive jurisdiction with respect to any such action.

**20.13. Indemnification.** Each Borrower shall indemnify, defend, and hold the Agent and each Revolving Credit Lender and any Participant and any of their respective employees, officers, or agents (each, an "**Indemnified Person**") harmless of and from any claim brought or threatened against any Indemnified Person by any Borrower, any guarantor or endorser of the Liabilities, or any other Person (as well as from attorneys' reasonable fees, expenses, and disbursements in connection therewith) on account of the relationship of the Borrowers or of any other guarantor or endorser of the Liabilities, including all costs, expenses, liabilities, and damages as may be suffered by any Indemnified Person in connection with (x) the Collateral; (y) the occurrence of any Event of Default; or (z) the exercise of any rights or remedies under any of the Loan Documents (each of claims which may be defended, compromised, settled, or pursued by the Indemnified Person with counsel of the Lender's selection, but at the expense of the Borrowers) other than any claim as to which a final determination is made in a judicial proceeding (in which the Agent and any other Indemnified Person has had an opportunity to be heard), which determination includes a specific finding that the Indemnified Person seeking indemnification had acted in a grossly negligent manner or in actual bad faith. This indemnification shall survive payment of the Liabilities and/or any termination, release, or discharge executed by the Agent in favor of the Borrowers, other than a termination, release, or discharge duly executed on behalf of the Agent which makes specific reference to this Section 20.13.

**20.14. Rules of Construction.** The following rules of construction shall be applied in the interpretation, construction, and enforcement of this Agreement and of the other Loan Documents:

(a) Unless otherwise specifically provided for herein (and then only to the extent so provided), interest and any fee or

charge which is stated as a per annum percentage shall be calculated based on a 360 day year and actual days elapsed.

(b) Words in the singular include the plural and words in the plural include the singular.

(c) Unless otherwise specifically provided for herein or in a specific Loan Document (and then only to the extent so provided), as between the parties hereto or to any Loan Document, the definitions of the following terms, as included in the UCC, are deemed to be as follows for purposes of the performance of obligations arising under or in respect of any Loan Document:

(i) "Authenticate" means "signed".

(ii) "Record" means written information in a tangible form.

(d) Cross references to Sections in this Agreement begin with the Article in which that Section appears, and then the Section to which reference is made.

(e) Titles, headings (indicated by being underlined or shown in Small Capitals) and any Table of Contents are solely for convenience of reference; do not constitute a part of the instrument in which included; and do not affect such instrument's meaning, construction, or effect.

(f) The words "includes" and "including" are not limiting.

(g) Text which follows the words "including, without limitation" (or similar words) is illustrative and not limitational.

(h) Text which is shown in italics (except for parenthesized italicized text), shown in bold, shown IN ALL CAPITAL LETTERS, or in any combination of the foregoing, shall be deemed to be conspicuous.

(i) The words "may not" are prohibitive and not permissive.

(j) Any reference to a Person's "knowledge" (or words of similar import) are to such Person's knowledge assuming that such Person has undertaken reasonable and diligent investigation with respect to the subject of such "knowledge" (whether or not such investigation has actually been undertaken).

(k) Terms which are defined in one section of any Loan Document are used with such definition throughout the instrument in which so defined.

(l) The term "Dollars" and the symbol "$" each refers to United States Dollars.

(m) Unless limited by reference to a particular Section or provision, any reference to "herein", "hereof", or "within" is to the entire Loan Document in which such reference is made.

(n) References to "this Agreement" or to any other Loan Document is to the subject instrument as amended to the date on which application of such reference is being made.

(o) Except as otherwise specifically provided, all references to time are to Boston time.

(p) In the determination of any notice, grace, or other period of time prescribed or allowed hereunder:

(i) Unless otherwise provided (I) the day of the act, event, or default from which the designated period of time begins to run shall not be included and the last day of the period so computed shall be included unless such last day is not a Business Day, in which event the last day of the relevant period shall be the then next Business Day and (II) the period so computed shall end at 5:00 PM on the relevant Business Day.

(ii) The word "from" means "from and including".

(iii) The words "to" and "until" each mean "to, but excluding".

(iv) The word "through" means "to and including".

(q) The Loan Documents shall be construed and interpreted in a harmonious manner and in keeping with the intentions set forth in Section 20.15 hereof, provided, however, in the event of any inconsistency between the provisions of this Agreement and any other Loan Document, the provisions of this Agreement shall govern and control.

**20.15. Intent.** It is intended that:

(a) This Agreement take effect as a sealed instrument.

(b) The scope of all Collateral Interests created by any Borrower to secure the Liabilities be broadly construed in favor of the Agent and that they cover all assets of each Borrower.

(c) All Collateral Interests created in favor of the Agent at any time and from time to time secure all Liabilities, whether now existing or contemplated or hereafter arising.

(d) All reasonable costs, expenses, and disbursements incurred by the Agent and, to the extent provided in Section 20.9 each Revolving Credit Lender, in connection with such Person's relationship(s) with any Borrower shall be borne by the Borrowers.

(e) Unless otherwise explicitly provided herein, the Agent's consent to any action of any Borrower which is prohibited unless such consent is given may be given or refused by the Agent in its sole discretion and without reference to Section 2.17(a) hereof.

**20.16. Right of Set-Off.** Any and all deposits or other sums at any time credited by or due to any Borrower from the Agent or any Revolving Credit Lender or any Participant or from any Affiliate of any of the foregoing, and any cash, securities, instruments or other property of any Borrower in the possession of any of the foregoing, whether for safekeeping or otherwise (regardless of the reason such Person had received the same) shall at all times constitute security for all Liabilities and for any and all obligations of each Borrower to the Agent and such Revolving Credit Lender or any Participant or such Affiliate and may be applied or set off against the Liabilities and against such obligations at any time, whether or not such are then due and whether or not other collateral is then available to the Agent or that Revolving Credit Lender.

**20.17. Pledges To Federal Reserve Banks:** Nothing included in this Agreement shall prevent or limit any Revolving Credit Lender, to the extent that such Revolving Credit Lender is subject to any of the twelve Federal Reserve Banks organized underss.4 of the Federal Reserve Act (12 U.S.C.ss.341) from pledging all or any portion of that Lender's interest and rights under this Agreement, provided, however, neither such pledge nor the enforcement thereof shall release the pledging Revolving Credit Lender from any of its obligations hereunder or under any of the Loan Documents.

**20.18. Maximum Interest Rate.** Regardless of any provision of any Loan Document, neither the Agent nor any Revolving Credit Lender shall be entitled to contract for, charge, receive, collect, or apply as interest on any Liability, any amount in excess of the maximum rate imposed by Applicable Law. Any payment which is made which, if treated as interest on a Liability would result in such interest's exceeding such maximum rate shall be held, to the extent of such excess, as additional collateral for the Liabilities as if such excess were "Collateral."

**20.19. Waivers.**

(a) Each Borrower (and all guarantors, endorsers, and sureties of the Liabilities) make each of the waivers included in Section 20.19(b), below, knowingly, voluntarily, and intentionally, and understands that Agent and each Revolving Credit Lender, in establishing the facilities contemplated hereby and in providing loans and other financial accommodations to or for the account of the Borrowers as provided herein, whether not or in the future, is relying on such waivers.

(b) EACH BORROWER, AND EACH SUCH GUARANTOR, ENDORSER, AND SURETY RESPECTIVELY WAIVES THE FOLLOWING:

(i) Except as otherwise specifically required hereby, notice of non-payment, demand, presentment, protest and all forms of demand and notice, both with respect to the Liabilities and the Collateral.

(ii) Except as otherwise specifically required hereby, the right to notice and/or hearing prior to the Agent's exercising of the Agent's rights upon default.

(iii) THE RIGHT TO A JURY IN ANY TRIAL OF ANY CASE OR CONTROVERSY IN WHICH THE AGENT OR ANY REVOLVING CREDIT LENDER IS OR BECOMES A PARTY (WHETHER SUCH CASE OR CONTROVERSY IS INITIATED BY OR AGAINST THE AGENT OR ANY REVOLVING CREDIT LENDER OR IN WHICH THE AGENT OR ANY REVOLVING CREDIT LENDER IS JOINED AS A PARTY LITIGANT), WHICH CASE OR CONTROVERSY ARISES OUT OF OR IS IN RESPECT OF, ANY RELATIONSHIP AMONGST OR BETWEEN ANY BORROWER OR ANY OTHER PERSON AND THE AGENT AND EACH REVOLVING CREDIT LENDER LIKEWISE WAIVES THE RIGHT TO A JURY IN ANY TRIAL OF ANY SUCH CASE OR CONTROVERSY).

(iv) The benefits or availability of any stay, limitation, hindrance, delay, or restriction (including, without limitation, any automatic stay which otherwise might be imposed pursuant to Section 362 of the Bankruptcy Code) with respect to any action which the Agent may or may become entitled to take hereunder.

(v) Any defense, counterclaim, set-off, recoupment, or other basis on which the amount of any Liability, as stated on the books and records of the Agent, could be reduced or claimed to be paid otherwise than in accordance with the tenor of and written terms of such Liability.

(vi) Any claim to consequential, special, or punitive damages.

**("Lead Borrower")**

**THE DISNEY STORE, LLC**

By /s/ Steven Balasiano

Print Name: Steven Balasiano

Title: Senior Vice President

**“Borrowers”:**

**THE DISNEY STORE, LLC**

By /s/ Steven Balasiano

Print Name: Steven Balasiano

Title: Senior Vice President

**HOOP RETAIL STORES, LLC**

By /s/ Steven Balasiano

Print Name: Steven Balasiano

Title: Senior Vice President

**“Guarantor”**

**HOOP CANADA HOLDINGS, INC.**

By /s/ Steven Balasiano

Print Name: Steven Balasiano

Title: Senior Vice President

**"Secondary Guarantors"**

**THE DISNEY STORE (CANADA) LTD.**

By /s/ Steven Balasiano

Print Name: Steven Balasiano

Title: Senior Vice President

**HOOP CANADA, INC.**

By /s/ Steven Balasiano

Print Name: Steven Balasiano

Title: Senior Vice President

**(“Agent”)**

**WELLS FARGO RETAIL FINANCE, LLC**

By /s/ David Molinario

Print Name: David Molinario

Title: Vice President

**WELLS FARGO RETAIL FINANCE, LLC,**
**As Revolving Credit Lender**

By: /s/ David Molinario

Print Name: David Molinario

Title: Vice President

**CONGRESS FINANCIAL CORPORATION (NEW ENGLAND), As Documentation Agent**
**and as Revolving Credit Lender**

By:/s/ Christopher S. Hudik

Print Name: Christopher S. Hudik

Title: First Vice President

**LASALLE RETAIL FINANCE,**
**a Division of LaSalle Business Credit, LLC,**
**as Agent for Standard Federal Bank National Association,**
**As Co-Agent and as Revolving Credit Lender**

By:/s/ Matthew D. Potter

Print Name: Matthew D. Potter

Title: Assistant Vice President

**WEBSTER BUSINESS CREDIT CORP.,**
**as Revolving Credit Lender**

By:/s/ Evan Israelson

Print Name: Evan Israelson

Title: Vice President

**EXHIBIT 31**

**SECTION 302 CERTIFICATIONS**

**CERTIFICATIONS**

I, Ezra Dabah, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Children's Place Retail Stores, 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)) 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) 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

(c) 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 officers 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 controls 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: December 9, 2004

By: /s/ Ezra Dabah
Chairman of the Board and
Chief Executive Officer

**CERTIFICATIONS**

I, Seth L. Udasin, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Children's Place Retail Stores, 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)) 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) 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

(c) 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 officers 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 controls 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: December 9, 2004

By: /s/ Seth L. Udasin
Vice President and
Chief Financial Officer

**EXHIBIT 32**

**SECTION 906 CERTIFICATIONS**

**CERTIFICATIONS**

I, Ezra Dabah, Chairman and Chief Executive Officer of The Children's Place Retail Stores, Inc. (the "Company"), pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, do hereby certify as follows:

1. The quarterly report of the Company on Form 10-Q for the period ended October 30, 2004 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 9th day of December, 2004.

By: /s/ Ezra Dabah
Chairman of the Board and
Chief Executive Officer

I, Seth L. Udasin, Vice President and Chief Financial Officer of The Children's Place Retail Stores, Inc. (the "Company"), pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, do hereby certify as follows:

1. The quarterly report of the Company on Form 10-Q for the period ended October 30, 2004 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 9th day of December, 2004.

By: /s/ Seth L. Udasin
Vice President and
Chief Financial Officer