



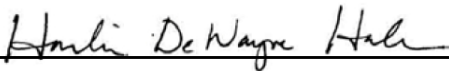
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 9, 2020


United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
Tuesday Morning Corporation, <i>et al.</i> , ¹	§	Case No. 20-31476-HDH-11
	§	
Debtors.	§	Jointly Administered

**FINAL ORDER
(I) AUTHORIZING DEBTORS TO
OBTAIN POSTPETITION TERM FINANCING ON A
SECURED, SUPERPRIORITY BASIS AND (II) GRANTING RELATED RELIEF**

CAME ON FOR CONSIDERATION on July 8, 2020, the *Debtors' Emergency Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 (I) Authorizing Debtors to Obtain Postpetition Term Financing on a Secured, Superpriority Basis, (II) Scheduling a Final Hearing, and (III) Granting Related Relief* [Docket No. 267 as

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Tuesday Morning Corporation (8532); TMI Holdings, Inc. (6658); Tuesday Morning, Inc. (2994); Friday Morning, LLC (3440); Days of the Week, Inc. (4231); Nights of the Week, Inc. (7141); and Tuesday Morning Partners, Ltd. (4232). The location of the Debtors' service address is 6250 LBJ Freeway, Dallas, TX 75240.

amended by Docket Nos. 269, 307, 396 and 406] (the “**Motion**”)² filed by the above-captioned debtors, as debtors-in-possession (collectively, the “**Debtors**”) seeking entry of a final order (this “**Final Order**”) pursuant to Sections 105, 361, 362(d), 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 503(b), and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas (the “**Local Rules**”), and the Procedures for Complex Chapter 11 Cases, inter alia:

- (i) authorizing the Debtors to obtain a superpriority, secured delayed draw debtor-in-possession term credit facility of up to \$25,000,000 to be secured by first priority liens on and security interests in certain real estate assets owned by the Debtors (the “**DIP Term Facility**,” the loan commitments thereunder and subject to terms acceptable to the DIP Term Lenders (as defined below), as provided in the DIP Term Documents (as defined below), this Final Order (as defined below), as applicable, the “**DIP Term Loan Commitments**”) composed of the \$25,000,000 of DIP Term Loan Commitments, to be available upon entry of the Final Order (the “**Final DIP Term Loans**”), and each such funding shall be deemed to be a Final DIP Term Loan advance under the DIP Term Documents (as defined below), pursuant to the terms and conditions set forth herein and in that certain *Senior Secured Super Priority Debtor-in-Possession Delayed Draw Term Credit Agreement* to be entered after the date of this Final Order (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “**DIP Term Credit Agreement**”),³ by and among the Borrowers (as defined therein), the Guarantors (as defined therein), Franchise Group, Inc., as administrative agent (in such capacity, the “**DIP Term Agent**”), for itself and for and on behalf of the other lenders party thereto (collectively, including the DIP Term Agent, the “**DIP Term Lenders**”), and all other related agreements and documents;
- (ii) authorizing the Debtors to execute, deliver, and perform under the DIP Term Credit Agreement and the other Loan Documents (as defined in the DIP Term Credit Agreement), the Final Order, and all other related agreements and documents creating, evidencing, or securing indebtedness or obligations of any of

² Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

³ A copy of the DIP Term Credit Agreement is attached hereto as **Exhibit 1** and incorporated herein as if set forth *in haec verba*.

the Debtors to the DIP Term Agent and the DIP Term Lenders on account of the DIP Term Facility or granting or perfecting liens or security interests by any of the Debtors in favor of and for the benefit of the DIP Term Agent, for itself and for and on behalf of the DIP Term Lenders, on account of the DIP Term Facility, as same now exists or may hereafter be amended, modified, supplemented, ratified, assumed, extended, renewed, restated, or replaced, and any and all of the agreements and documents currently executed or to be executed in connection therewith or related thereto, by and among any of the Debtors, the DIP Term Agent, and the DIP Term Lenders, in form and substance acceptable to the DIP Term Agent and the DIP Term Lenders, the terms of which are referenced and incorporated herein as if set forth *in haec verba* (collectively, the “**DIP Term Documents**”);

- (iii) approving the terms and conditions of the DIP Term Credit Agreement and the other DIP Term Documents;
- (iv) modifying the automatic stay of section 362 of the Bankruptcy Code (the “**Automatic Stay**”) to the extent provided herein;
- (v) granting continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected first-priority priming liens on and security interests in the DIP Term Collateral (as defined below) to the DIP Term Agent, for itself and for and on behalf of the DIP Term Lenders, to secure all obligations and indebtedness of any of the Debtors to the DIP Term Agent and the DIP Term Lenders under the DIP Term Documents (the “**DIP Term Obligations**”); and
- (vi) waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of the Final Order and providing for the immediate effectiveness of the Final Order.

The Court having considered the Motion, the terms of the DIP Term Credit Agreement and the other DIP Term Documents, and the evidence submitted before and during the final hearing held before this Court on July 8, 2020 to consider entry of this Final Order (the “**Final Hearing**”); and in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014 and the Local Rules, notice of the Motion and the Final Hearing having been given; and it appearing that approval of the final relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and is otherwise fair and reasonable and in the best interests of the Debtors, their creditors and their estates, and essential for the continued operation of the

Debtors' businesses; and all objections, if any, to the entry of this Final Order having been withdrawn, resolved or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Debtors and the DIP Term Agent have represented to this Court that they have agreed in good faith to the terms and conditions of the DIP Term Facility and this Final Order.

2. The Debtors and the DIP Term Agent have stipulated and agreed as follows, and based upon the pleadings and evidence at the Final Hearing before this Court, this Court hereby acknowledges such stipulations, and grants the relief herein, on a final basis. Therefore, consistent with sections 361, 362, 363, 364, 503(b), and 507 of the Bankruptcy Code, this Court hereby finds and orders:

OPPORTUNITY TO OBJECT

3. Any party objecting to the entry of this Final Order was required to file such objection in writing with the Clerk of the Court on or before 5:00 p.m. Central Time on July 6, 2020.

4. The Debtors and the DIP Term Agent have represented to the Court that they have negotiated at arm's length and have acted in good faith in the negotiation and preparation of the DIP Term Facility and this Final Order, have been represented by counsel, and intend to be and are bound by their respective terms. The terms and conditions of this Final Order and the DIP Term Documents reflect the Debtors' exercise of prudent business judgment under exigent circumstances and are consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration.

STATEMENT OF JURISDICTION

5. This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (D), (G), (K), (M) and (O).

NOTICE

6. Notice of the Motion and the Final Hearing has been given to prevent immediate and irreparable harm pursuant to Bankruptcy Rules 2002, 4001, 9006, and 9014 and the Local Rules, and as required by sections 102, 105, 361, 362, 363, and 364 of the Bankruptcy Code. Other than the notice provided for herein, no further notice of the final relief sought in the Motion is necessary.

FACTUAL AND PROCEDURAL BACKGROUND

7. On May 27, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in the management and possession of their business and property as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

8. On June 9, 2020 an official committee of unsecured creditors (the “*Committee*”) was appointed in these chapter 11 cases (the “*Cases*”).

DIP TERM FACILITY

Need for DIP Term Facility

9. The failure of the Debtors to obtain Court approval of the DIP Term Facility would constitute an event of default under the DIP ABL Credit Agreement, as defined in the *Final Order (I) Authorizing Debtors to (A) Use Cash Collateral on a Limited Basis and (B) Obtain Postpetition Financing on a Secured, Superpriority Basis, (II) Granting Adequate Protection, and (III) Granting Related Relief* [Docket No. 331], entered by this Court on June 26, 2020 (the “*Final DIP ABL Order*”). The loans provided under the DIP Term Facility are actual and necessary to preserving

the Debtors and their estates. The DIP Term Agent and the DIP Term Lenders are willing to provide the DIP Term Facility to or for the benefit of the Debtors only in accordance with the terms of the DIP Term Credit Agreement and this Final Order.

10. The Debtors have requested that the DIP Term Agent and the DIP Term Lenders provide the DIP Term Facility in order to provide funds to be swept and applied to the loans advanced under the DIP ABL Facility (as defined herein) in accordance with the Final DIP ABL Order and to comply with the DIP ABL Credit Agreement.

11. The Debtors have been unable to obtain term financing in the form of: (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; or (b) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Term financing on a post-petition basis is not otherwise available without granting the DIP Term Agent, for the benefit of itself and the DIP Term Lenders: (a) perfected security interests in and DIP Term Liens on (each as provided herein) the DIP Term Collateral (as defined below) as set forth herein, (b) superpriority claims with the priorities set forth herein, and (c) the other protections set forth in this Final Order.

12. Any credit extended under the terms of this Final Order and the DIP Term Facility shall be deemed to have been extended in good faith by the DIP Term Agent and the DIP Term Lenders, as the term “good faith” is used in section 364(e) of the Bankruptcy Code.

Authorization to Obtain Credit

13. The Debtors are hereby authorized to obtain credit under the DIP Term Facility only in accordance with the DIP Term Credit Agreement, the DIP Term Facility, and this Final Order.

14. The Debtors are hereby authorized to obtain the Final DIP Term Loans in an aggregate principal amount not to exceed \$25,000,000 as provided in the DIP Term Credit Agreement,

in each case in accordance with the terms and conditions set forth herein and in the DIP Term Credit Agreement and the DIP Term Documents.

15. The DIP Term Documents and the terms therein, including, without limitation, the fees, indemnification provisions, and priming lien provisions, are approved in their entirety. The Debtors are authorized to execute, deliver, and perform under the DIP Term Documents.

DIP Term Liens and Superpriority Administrative Claims

16. Effective as of the date of entry into the DIP Term Credit Agreement, the DIP Term Agent, for itself and for and on behalf of the DIP Term Lenders, is entitled to and is hereby granted perfected, first priority liens on and security interests in that certain real property, land and improvements at the Debtors' corporate headquarters and warehouse/distribution complex, each in Dallas County, Texas at the following addresses: (i) 14601 Inwood Rd, Addison, Texas 75001; (ii) 14603 Inwood Rd, Addison, Texas 75001; (iii) 14621 Inwood Rd, Addison, Texas 75001; (iv) 14639-14647 Inwood Rd, Addison, Texas 75001; (v) 4404 S. Beltwood Parkway, Farmers Branch, Texas 75244; (vi) 14303 Inwood Road, Farmers Branch, Texas 75244; and (vii) 6250 LBJ Freeway, Dallas, Texas 75240, and all real estate improvements thereto and all leases, rents, permits, records, and proceeds thereof (collectively, the "***DIP Term Collateral***"; the first-priority priming liens on and security interests in the DIP Term Collateral are collectively referred to herein as the "***DIP Term Liens***"), and the protections of good-faith credit providers under sections 364(c)(1), (c)(2), and (c)(3), 364(d)(1), and 364(e) of the Bankruptcy Code to secure the DIP Term Facility, senior to all other liens and security interests on or in the DIP Term Collateral, which DIP Term Liens shall secure all DIP Term Obligations (and including, without limitation, principal and any other extensions of credit, interest, fees, expenses, and any fees and expenses of the DIP Term Agent and the DIP Term Lenders in these Cases, to the extent provided in the DIP Term Credit Agreement); *provided* that upon the funding of the Final DIP Term Loans, and in accordance with an intercreditor agreement (the

“Intercreditor Agreement”), in form and substance acceptable to, on the one hand, the DIP Term Agent, and, on the other hand, JPMorgan Chase Bank, N.A., in its capacity as administrative agent (the **“DIP ABL Agent”**) under the DIP ABL Credit Agreement, the DIP ABL Agent, for itself and for and on behalf of the lenders party to the DIP ABL Credit Agreement (collectively, the **“DIP ABL Lenders”**), shall be granted security interests in and liens on the DIP Term Collateral and any proceeds thereof.

17. All liens and security interests granted hereby and under the DIP Term Documents securing the DIP Term Facility, including the DIP Term Liens, are effective as of the date of entry into the DIP Term Credit Agreement and are valid and automatically perfected first-priority priming liens and security interests, in and upon the DIP Term Collateral, and hereby are granted in and attach to, the DIP Term Collateral, and all proceeds, products, rents, revenues, and profits of same.

18. Additionally, on account of the DIP Term Facility, the DIP Term Agent, for itself and for and on behalf of the DIP Term Lenders, is hereby granted superpriority administrative claims (the **“DIP Term Superpriority Claims”**) and all other benefits and protections allowable under sections 507(b) and 503(b)(1) of the Bankruptcy Code, in each case subject to the Intercreditor Agreement, (i) senior in right to all other administrative claims against the Debtors’ estates with respect to all recoveries from the DIP Term Collateral; and (ii) otherwise *pari passu* in right to the DIP Superpriority Claims granted to the DIP ABL Agent, for itself and for and on behalf of the DIP ABL Lenders.

Budget

19. The Debtors shall deliver to the DIP Term Agent a weekly update of the 13-week cash flow budget attached as **Exhibit 2** to the Final DIP ABL Order (the **“Budget”**) and reconciliation report (the **“Budget Report”**) showing variances of Budget amounts to actual amounts, detailing the Debtors’ receipts and disbursements for the previous calendar week, and providing a comparison to the

amounts set forth in the Budget therefor for such week (on an aggregate and a line item by line item basis in the case of disbursements). The Debtors shall deliver to the DIP Term Agent the Budget and the Budget Report as and when the Debtors are required to deliver the Budget and the Budget Report to the DIP ABL Agent in accordance with the terms of the Final DIP ABL Order.

Automatic Perfection

20. This Final Order shall be sufficient and conclusive evidence of the priority, perfection, attachment, and validity of all of the DIP Term Agent and DIP Lenders' security interests in and liens on the DIP Term Collateral granted and created hereunder, and such security interests and liens shall constitute valid, automatically perfected and unavoidable security interests and liens, with the priorities granted hereunder, effective as of the date of entry into the DIP Term Credit Agreement, without the necessity of creating, filing, recording, or serving any financing statements, fixture filings, continuation statements, deeds of trust, mortgages, or other documents that might otherwise be required under federal or state law in any jurisdiction or the taking of any other action to validate or perfect the security interests and liens granted to the DIP Term Agent, for itself and for and on behalf of the DIP Term Lenders, by this Final Order.

21. To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of the liens and security interests granted and created by this Final Order or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby pre-empted to the maximum extent permitted by the Bankruptcy Code, applicable federal law, and the judicial power of the United States Bankruptcy Court.

22. By virtue of the terms of this Final Order, to the extent that the DIP Term Agent has filed deeds of trust, mortgages, Uniform Commercial Code financing statements, fixture filings or other security or perfection documents under the names of any of the Debtors, such filings shall be

deemed to properly perfect the liens and security interests granted under this Final Order without further action by the DIP Term Agent.

23. If the DIP Term Agent shall elect, in its determination, for any reason to file any deeds of trust, mortgages, Uniform Commercial Code financing statements, fixture filings or other recordable documents, to further evidence perfection of its interests in property of the estates, the DIP Term Agent, or, upon the request of the DIP Term Agent, the Debtors, are authorized and directed to execute, enter into, and/or file, or cause to be executed, entered into, and/or filed, all such deeds of trust, mortgages, financing statements, fixture filings and other such documents, and the execution, entering into, filing, recording, or service (as the case may be) of such deeds of trust, mortgages, financing statements, fixture filings, or similar documents shall be deemed to have been made at the time of and on the date of entry into the DIP Term Credit Agreement, and the signature(s) of any person(s) designated by the Debtors, whether by letter to the DIP Term Agent or by appearing on any one or more of the agreements or other documents respecting the security interests and liens granted hereunder shall bind the Debtors and their estates. The DIP Term Agent may execute such documents on behalf of the Debtors as the Debtors' attorney-in-fact or file a certified copy of this Final Order in any filing or recording office in any county or other jurisdiction in which any of the Debtors have real or personal property, and, in such event, the subject filing or recording officer is authorized and directed to file or record such documents or certified copy of this Final Order.

Authorization to Act

24. The Debtors are hereby authorized and directed to perform all acts, take any action, and execute and comply with the terms of such other documents, instruments and agreements, as the DIP Term Agent may require as evidence of and for the protection of the DIP Term Collateral, or that may be otherwise deemed necessary by the DIP Term Agent to effectuate the terms and conditions of this Final Order and the DIP Term Facility.

No Prior Permitted Liens

25. The first-priority security interests and liens on the DIP Term Collateral granted pursuant to the terms of this Final Order are not subject or subordinate to any other liens and security interests of any other secured creditor. The DIP Term Liens granted to the DIP Term Agent and the DIP Term Lenders pursuant to this Final Order shall not at any time be (a) made subject or subordinated to, or made *pari passu* with, any other lien or security interest existing on or created after the Petition Date, or any claim, lien, or security interest created under sections 363 or 364(d) of the Bankruptcy Code or otherwise, or (b) subject to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code. Without limiting the foregoing, and subject to the Intercreditor Agreement, the DIP Term Liens on the DIP Term Collateral are senior in priority to any security interest and liens of the DIP ABL Agent on the DIP Term Collateral, whether arising prior to, on or after the date of entry into the DIP Term Credit Agreement.

No Additional Liens

26. Until such time as the DIP Term Obligations shall have been indefeasibly paid and satisfied in full in accordance with the terms of the DIP Term Documents, the Debtors shall not be authorized to obtain credit secured by a lien or security interest in the DIP Term Collateral, other than liens securing that certain superpriority secured debtor-in-possession revolving credit facility provided for by the DIP ABL Credit Agreement (such facility, the "***DIP ABL Facility***") that are junior and subordinate to the DIP Term Liens on the DIP Term Collateral in accordance with the Intercreditor Agreement, without the prior written consent of the DIP Term Agent, for itself and for and on behalf of the DIP Term Lenders.

No Liability

27. No act committed or action taken by the DIP Term Agent, for itself and for and on behalf of the DIP Term Lenders, as applicable, under this Final Order, the DIP Term Facility, the DIP Term Documents, or the collection of the DIP Term Obligations, shall be used, construed, or deemed to hold the DIP Term Agent and/or the DIP Term Lenders, as applicable, to be in “control” of or participating in the governance, management, or operations of the Debtors for any purpose, without limitation, or to be acting as a “responsible person(s)” or “owner(s) or operator(s)” or a person(s) in “control” with respect to the governance, management, or operation of the Debtors or their businesses (as such terms, or any similar terms, are used in the Internal Revenue Code, WARN Act, Comprehensive Environmental Response, Compensation and Liability Act, or the Bankruptcy Code, each as may be amended from time to time, or any other federal or state statute, at law, in equity, or otherwise) by virtue of the interests, rights, and remedies granted to or conferred upon the DIP Term Agent and the DIP Term Lenders under the DIP Term Documents or this Final Order including, without limitation, such rights and remedies as may be exercisable by the DIP Term Agent and the DIP Term Lenders, as applicable, in connection with this Final Order, the DIP Term Facility, or the DIP Term Documents.

Automatic Stay

28. The Automatic Stay is hereby modified to the extent necessary to permit (a) the Debtors, the DIP Term Agent, and the DIP Term Lenders to commit all acts and take all actions necessary to implement the DIP Term Facility and this Final Order, (b) all acts, actions, grants, actions to perfect and transfers contemplated herein, and (c) consistent with the terms of this Final Order, to permit the DIP Term Agent and/or the DIP Term Lenders, at their option, to pursue their rights and remedies as to the DIP Term Collateral, the DIP Term Documents, and applicable law.

Reporting Requirements

29. The Debtors are authorized and directed to provide to the DIP Term Agent all of the documentation and reports required under the DIP Term Credit Agreement, the other DIP Term Documents and the DIP Documents (as defined in the Final DIP ABL Order) unless the DIP Term Agent waives or modifies such requirements in writing (the “***Reporting Information***”).

Interest, Fees, Costs and Expenses of the DIP Term Lenders

30. During the Cases, all interest, fees, necessary costs, and necessary expenses, including necessary and reasonable attorneys’ fees and expenses, that are incurred after the Petition Date due at any time to the DIP Term Agent and the DIP Term Lenders under the DIP Term Documents (including, without limitation, the expenses described in Section 9.05 of the DIP Term Credit Agreement), as applicable (collectively, the “***Lenders’ Costs***”), may be charged by the DIP Term Lenders and shall be paid by the Debtors, on a monthly basis. The Debtors are hereby authorized to pay such Lenders’ Costs without the DIP Term Agent or the DIP Term Lenders, or their counsel having to file any further application with this Court for approval or payment. Any such Lenders’ Costs that are incurred after the Petition Date that constitute fees and expenses incurred by any professional retained by the DIP Term Agent shall be paid within ten (10) calendar days of delivery of a summary invoice to the Debtors, which may be redacted for privilege as determined by the DIP Term Agent, with a copy to the Office of the United States Trustee (the “***U.S. Trustee***”), the DIP ABL Agent, and counsel for the Committee; *provided, however*, that (i) any redacted fee statements shall retain all privileges irrespective of any disclosure of any privileged matter, and any such disclosure shall be deemed inadvertent for all purposes and deemed stricken from any record in these Cases or otherwise, (ii) if the Debtors, the U.S. Trustee, the DIP ABL Agent, or the Committee objects to the reasonableness of such fees and expenses and cannot resolve such objection within five (5) business days of service of such summary invoice(s), the Debtors, the U.S. Trustee, or the Committee, as the

case may be, shall file and serve upon such professional an objection with the Court (a “***Fee Objection***”) limited to the issue of the reasonableness of the disputed fees and expenses within ten (10) calendar days of the delivery of such summary invoice and such disputed portion shall not be paid; (iii) if the Debtors, the U.S. Trustee, the DIP ABL Agent, or the Committee fails to object to the reasonableness of such fees and expenses within ten (10) calendar days, any objection of the Debtors, the U.S. Trustee, the DIP ABL Agent, or the Official Committee of Unsecured Creditors, as the case may be, shall be waived, (iv) the Debtors shall timely pay in accordance with this Final Order the undisputed fees and expenses reflected on any invoice to which a Fee Objection has been timely filed, and (v) notwithstanding the foregoing (i) – (iv) of this sentence, the Lenders’ Costs incurred prior to and unpaid as of the date of entry into the DIP Term Credit Agreement shall be paid indefeasibly upon entry of this Final Order. All undisputed Lenders’ Costs, regardless of whether or not such Lenders’ Costs are set forth in the Budget, shall constitute obligations under the DIP Term Facility and shall be secured by the DIP Term Collateral and afforded all priorities and protections afforded to the DIP Term Facility under this Final Order and the DIP Term Documents.

No Carve-Out

31. No amounts payable by the Debtors to professionals retained by the Debtors or the Committee on account of fees or expenses shall be chargeable against the DIP Term Collateral or in any way entitled to a “carve out” (including the Carve-Out as defined in the Final DIP ABL Order) or similar benefit that is senior to or *pari passu* with the DIP Term Liens. For the avoidance of doubt, the DIP Term Liens shall not be subordinate or subject to the Carve-Out as defined in the Final DIP ABL Order.

No Marshaling

32. The DIP Term Agent and the DIP Term Lenders shall not be subject in any way whatsoever to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

Section 552(b) of the Bankruptcy Code

33. Effective upon entry of this Final Order, the DIP Term Agent shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Term Agent with respect to proceeds, products, offspring, or profits of any of the DIP Term Collateral.

Confidentiality and Information Barrier

34. Neither the DIP Term Agent nor the DIP Term Lenders shall share, or cause to be shared, whether directly or indirectly, any information or documents obtained from the Debtors or DIP ABL Agent with (a) B. Riley Financial, Inc., its subsidiaries or affiliates, or Bryant Riley (collectively, “**B. Riley**”), or (b) the Consultant (as defined in the *Final Order Granting The Debtors’ Emergency Motion For Entry Of Interim And Final Orders (I) Authorizing The Debtors To Assume The Consulting Agreement; (II) Approving Procedures For Store Closing Sales; (III) Approving The Sale Of Store Closure Assets Free And Clear Of All Liens, Claims And Encumbrances; (IV) Waiving Compliance With Applicable State Laws And Approving Dispute Resolution Procedures; (V) Approving Procedures To Conduct Sales In Additional Closing Stores; And (VI) Granting Related Relief*), or its subsidiaries or affiliates.

35. The DIP Term Agent shall establish an information barrier so that it does not share with or receive any information or documents from B. Riley or the Consultant, whether directly or indirectly.

No Proofs of Claim

36. Neither the DIP Term Agent nor the DIP Term Lenders shall be required to file proofs of claim or request for payment of administrative expenses in any of the Cases or subsequent cases of the Debtors under any chapter of the Bankruptcy Code. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation, administrative expense claims and priority claims) in any of the Cases or subsequent cases shall not apply to the DIP Term Agent or the DIP Term Lenders with respect to the DIP Term Obligations.

POSTPETITION DEFAULT/REMEDIES

Postpetition Defaults

37. The occurrence of any of the following shall constitute a Postpetition Default under this Final Order and the DIP Term Documents, upon notice to the Debtors by the DIP Term Agent: (a) any violation, or breach by any of the Debtors of any of the terms of the Final Order; (b) the occurrence and continuation of any event of default as defined in any of the other DIP Term Loan Documents or the DIP ABL Facility; (c) *[reserved]*; (d) nonpayment of principal, interest, or mandatory prepayments as and when due under the DIP Term Documents; (e) the failure or breach of any warranty or representation, in any material respect, or the breach of affirmative covenants of the Debtors (which in the case of certain affirmative covenants is subject to a 15-day cure period), or the breach of any negative covenant of the Debtors, in each case as set forth in the DIP Term Loan Documents; (f) entry of an order for the dismissal or conversion to Chapter 7 of any Debtor's bankruptcy case; the appointment of a bankruptcy trustee, examiner or other fiduciary with decision making authority except with the express written consent of the DIP Term Agent;; any Debtor shall attempt to vacate or modify the Final Order over the objection of the DIP Term Agent; or any Debtor shall institute any proceeding or investigation or support same by any other person who seeks to challenge the status and/or validity of the liens of the DIP Term Agent (as security for the Lenders); (g) the Bankruptcy Court shall enter

an order or orders granting relief from the automatic stay to the holder or holders of any security interest or lien (other than the Lenders) to permit the pursuit of any judicial or non-judicial transfer or other remedy against the Collateral, in each case involving assets with an aggregate value in excess of \$150,000; (i) entry of a Sale Order which includes the sale of the Real Estate Assets or a Real Estate Sale Order unless either such order contemplates either indefeasible payment in full in cash of the DIP Term Facility upon consummation of the sale or is otherwise consented to in writing by the DIP Term Agent (as each term is defined in the DIP Term Credit Agreement); and (j) the filing or support by the Debtors of any plan of reorganization that does not contemplate indefeasible payment in full in cash of the DIP Term Facility without consent of the DIP Term Agent (any of the foregoing postpetition defaults being referred to in this Final Order, individually, as a “*Postpetition Default*”, and collectively, as “*Postpetition Defaults*”).

Remedies

38. Upon the occurrence of any Postpetition Default, and at all times thereafter, and after five (5) business days’ notice to the Debtors, with a copy to counsel for the Committee, and reasonable opportunity to cure, hearing, or order of this Court, and if the subject default was not cured and/or this Court did not issue an order otherwise : (a) any and all obligations of the DIP Term Agent and the DIP Term Lenders in connection with the DIP Term Facility or under this Final Order and the DIP Term Documents (including any obligation to lend or provide additional credit) shall immediately terminate, (b) the DIP Term Agent, for itself and for and on behalf of the DIP Term Lenders may (at its option) declare all or any part of the DIP Term Facility to be immediately accelerated and due and payable for all purposes, rights, and remedies, and (c) the DIP Term Agent may impose the default rate of interest provided for in the DIP Term Facility.

39. Furthermore, upon any occurrence of any Postpetition Default, and after the giving of five (5) business days’ notice by the DIP Term Agent to the Debtors, the Committee, the DIP

ABL Agent and the U.S. Trustee, and opportunity to cure, and if the subject default was not cured then the DIP Term Agent may seek, on an expedited basis, relief from the Automatic Stay to take any and all actions and remedies that the DIP Term Agent may deem appropriate to proceed against, take possession of, protect, and realize upon the DIP Term Collateral, including, without limitation, any right or remedy set forth in the DIP Term Documents or applicable law.

40. Upon or after the occurrence of any Postpetition Default, the DIP Term Agent and the DIP Term Lenders may, in their determination, and in accordance with the Intercreditor Agreement and the DIP ABL Credit Agreement, advance funds to the Debtors, and all such advances (a) shall not constitute a waiver, limitation, or modification of the DIP Term Agent's and the DIP Term Lenders' rights and remedies pursuant to the DIP Term Documents, this Final Order, and applicable law and (b) shall be and hereby are granted all of the protections granted to the DIP Term Agent and the DIP Term Lenders under this Final Order in connection with the DIP Term Facility.

Right to Credit Bid

41. The DIP Term Agent, for itself and for and on behalf of the DIP Term Lenders, as applicable, may credit bid (the "***Credit Bid Right***") any portion and up to the entire amount of the DIP Term Obligations, as applicable, at any time on any individual asset, portion of the assets, or all assets constituting the DIP Term Collateral in conjunction with any sale pursuant to section 363 of the Bankruptcy Code (a "***363 Sale***"). The DIP Term Agent shall be a qualified and permitted bidder in all respects at any auction, and shall not be required to submit a deposit, purchase agreement, or any other deliverable or documentation to the Debtors or their representatives or agents in connection with its credit bid on the DIP Term Collateral. Upon exercise of the Credit Bid Right, the DIP Term Agent and DIP Term Lenders shall not be required to take title to any individual asset, portion of the assets, or all of the assets, and the DIP Term Agent shall have the right to designate any person or entity that shall take title to the individual asset, portion of the assets, or all of the assets that are subject to the Credit

Bid Right. No other person may credit bid in respect of any or all of the DIP Term Collateral unless the entire amount of the DIP Term Obligations will be indefeasibly paid in full in cash on the closing of the 363 Sale. In the event the DIP Term Agent, for itself and for and on behalf of the DIP Term Lenders, exercises its Credit Bid Right and the amount of the DIP Term Agent's credit bid exceeds the total amount of the highest bids for the assets subject to the Credit Bid Right, the DIP Term Agent's credit bid, for itself and for and on behalf of the DIP Term Lenders, as applicable, shall be deemed the highest and best bid and such credit bid shall be accepted by the Debtors and be presented for approval to the Court.

OTHER TERMS

42. The Debtors and the DIP Term Agent are authorized to implement, subject to the written consent of the DIP ABL Agent, in accordance with the terms of the DIP Term Documents, any modifications or amendments to any DIP Term Document which are not material and adverse to the Debtors; provided, however, that the Committee shall be provided with the proposed waiver, amendment or modification and if the Committee has objections thereto, the Committee may seek to have such objection addressed on an expedited basis by the Court with notice to the Debtors and the DIP Term Agent, and such proposed modifications to the Budget shall not become effective until the Court rules on the Committee's objection. Any modifications or amendments of any DIP Term Document which are material and adverse to the Debtors shall be subject to prior approval by this Court upon motion by the Debtors.

43. The DIP Term Agent and the DIP Term Lenders, as applicable, may assign or participate any portion of their DIP Term Obligations and enter into an intercreditor agreement or other documentation related to same to the extent permitted by the DIP Term Documents.

44. Except as provided in the Final DIP ABL Order and the Intercreditor Agreement, no priority claims shall be allowed that are or will be prior to or *pari passu* with the superpriority

claims or secured claims of the DIP Term Agent and the DIP Term Lenders against the Debtors and their estates arising from the DIP Term Documents and this Final Order.

45. No obligations incurred or payments or other transfers made by or on behalf of the Debtors on account of the DIP Term Facility shall be avoidable or recoverable from the DIP Term Agent or the DIP Term Lenders under any section of the Bankruptcy Code, or any other federal, state, or other applicable law.

46. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any of the DIP Term Collateral, without the prior written consent of the DIP Term Agent as set forth herein unless such transaction results in the indefeasible payment in full in cash of the DIP Term Obligations.

47. All advances under the DIP Term Facility are made in reliance on this Final Order, and so long as the DIP Term Obligations remain unpaid, there shall not at any time be entered in these Cases any other order that, except as consented to by the DIP Term Agent in writing, and subject to the terms of the Final DIP ABL Order and the Intercreditor Agreement, (a) authorizes the sale, lease, or other disposition of the DIP Term Collateral unless the cash proceeds will indefeasibly pay the DIP Term Obligations in full, in cash, (b) authorizes the obtaining of credit or the incurring of indebtedness secured by a lien or security interest in property in which the DIP Term Agent or the DIP Term Lenders, as applicable, hold or assert liens or security interests, or (c) grants to any claim a priority administrative claim status that is equal or superior to the superpriority status granted to the DIP Term Agent and the DIP Term Lenders, as applicable, herein.

48. The terms hereunder and under the DIP Term Documents, the security interests and liens granted to the DIP Term Agent and the DIP Term Lenders under this Final Order, and the rights of the DIP Term Agent and the DIP Term Lenders pursuant to this Final Order with respect to

the DIP Term Collateral shall not be altered, modified, extended, impaired, or affected by any plan of reorganization of the Debtors without the prior written approval of the DIP Term Agent.

49. The provisions of this Final Order shall inure to the benefit of the Debtors, the DIP Term Agent and the DIP Term Lenders, and they shall be binding upon (a) the Debtors and their successors and assigns, including any trustee or other fiduciary hereafter appointed as legal representative of the Debtors or with respect to property of the estates of the Debtors, whether under chapter 11 of the Bankruptcy Code, any confirmed plan, or any subsequent chapter 7 case, and (b) all creditors of the Debtors and other parties in interest.

50. The terms and provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order that may be entered converting to chapter 7 or dismissing these Cases, except for any obligations of the DIP Term Agent and the DIP Term Lenders under the DIP Term Documents (all of which shall immediately terminate upon entry of such an order). The terms and provisions of this Final Order, as well as the priorities in payment, liens, and security interests granted pursuant to this Final Order and the DIP Term Documents, shall continue in this or any subsequent case under the Bankruptcy Code of the Debtors, and such priorities in payment, liens, and security interests shall maintain their priority as provided by this Final Order until such time as the DIP Term Obligations shall have been indefeasibly paid and satisfied in full, in cash, in accordance with the terms of the DIP Term Documents and the DIP Term Agent and the DIP Term Lenders shall have no further obligation or financial accommodation to the Debtors.

51. If any or all of the provisions of this Final Order are hereafter modified, vacated, or stayed without the prior written agreement of the DIP Term Agent, such modification, vacation, or stay shall not affect (a) the validity of any obligation, indebtedness or liability incurred by the Debtors to the DIP Term Agent and the DIP Term Lenders before the effective date of such modification,

vacation, or stay or (b) the validity or enforceability of any security interest, lien, priority or other protection authorized, granted, or created hereby or pursuant to this Final Order or any of the DIP Term Documents. Notwithstanding any such modification, vacation, or stay, any indebtedness, obligations, or liabilities incurred by the Debtors to the DIP Term Agent, for itself or for and on behalf of the DIP Term Lenders, as applicable, before the effective date of such modification, vacation, or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Term Agent, for itself and for and on behalf of the DIP Term Lenders, shall be entitled to all the liens, rights, remedies, privileges, and benefits granted herein and pursuant to the DIP Term Documents with respect to all such indebtedness, obligations, or liabilities.

52. To the extent the terms and conditions of the DIP Term Documents are in express conflict (as opposed to being additive, limiting, or more specific than this Final Order) with the terms and conditions of this Final Order, the terms and conditions of this Final Order shall control.

53. No approval, agreement, or consent requested of the DIP Term Agent by the Debtors pursuant to the terms of this Final Order or otherwise shall be inferred from any action, inaction, or acquiescence of the DIP Term Agent other than a writing acceptable to the DIP Term Agent that is signed by the DIP Term Agent and expressly shows such approval, agreement or consent, without limitation. Nothing herein shall in any way affect the rights of the DIP Term Agent or the DIP Term Lenders as to any non-Debtor entity, without limitation. Except as expressly and contrarily set forth herein or in the DIP Term Credit Agreement, any determination, agreement, decision, consent, election, approval, acceptance, waiver, designation, authorization, or other similar circumstance or matter of or by the DIP Term Agent or the DIP Term Lenders hereunder or related hereto, without limitation, shall be in the DIP Term Agent's and the DIP Term Lenders' determination.

54. Nothing herein shall be deemed or construed to waive, limit, or modify the rights of the DIP Term Agent, for itself and for and on behalf of the DIP Term Lenders, to obtain further adequate protection and other statutory protections for the use of the DIP Term Collateral, or to seek other relief in these Cases in accordance with any provision of the Bankruptcy Code or applicable law.

55. Unless expressly and specifically provided otherwise herein, nothing herein shall be deemed or construed to waive, limit, modify or prejudice the claims, rights, protections, privileges and defenses of the DIP Term Agent and the DIP Term Lenders afforded pursuant to the Bankruptcy Code.

56. This Final Order, and the findings of fact and conclusions of law contained herein, shall be effective upon signature by the Court, and may be relied upon by the DIP Term Agent, the DIP Term Lenders and the Debtors without the necessity of entry into the docket sheet of these Cases. To the extent any findings of fact may constitute conclusions of law, and *vice versa*, they are hereby deemed as such.

57. This Court hereby expressly retains jurisdiction over all persons and entities, co-extensive with the powers granted to the United States Bankruptcy Court under the Bankruptcy Code, to enforce the terms of this Final Order and to adjudicate any and all disputes in connection therewith by motion and without necessity of an adversary proceeding.

58. Notwithstanding anything to the contrary herein or in the DIP Term Documents, all rights of the DIP ABL Agent under the Final DIP ABL Order and the DIP ABL Credit Agreement are expressly reserved.

59. All headings in this Final Order are descriptive and for reference only, and do not have separate meaning or change any terms therein.

60. The releases and indemnities set forth in the DIP Term Credit Agreement are approved in all respects.

NOTICE

61. The Debtors' counsel shall serve this Final Order on all of the following parties: (a) the U.S. Trustee; (b) counsel to the DIP Term Agent and the DIP Term Lenders, and the DIP ABL Agent; (c) all creditors known to the Debtors who have or may assert liens against any of the Debtors' assets; (d) the United States Internal Revenue Service; (e) counsel to the Committee; and (f) all parties in interest who have filed a notice of appearance or upon whom service must be effected under the Federal Rules of Bankruptcy Procedure or the Local Rules.

EXPIRATION DATE/MATURITY

62. The DIP Term Agent's and the DIP Term Lenders' commitment to provide credit under the DIP Term Credit Agreement and this Final Order, subject to the funding limitations above, shall be effective upon entry of this Final Order to and including the earlier of: (a) notice of the occurrence of a Postpetition Default or (b) April 8, 2021, at 5:00 p.m. Central Time (unless such date is extended pursuant to the terms of the DIP Term Credit Agreement in which case it shall be July 8, 2021), at which time all of the Debtors' authority to obtain additional credit under the DIP Term Credit Agreement and this Final Order shall terminate, as shall the DIP Term Agent's and the DIP Term Lenders' obligation to continue funding the DIP Term Facility, unless extended by written agreement of the parties hereto, a copy of which shall be promptly filed with this Court by the Debtors.

63. THIS ORDER IS EFFECTIVE IMMEDIATELY.

END OF ORDER # #

EXHIBIT 1

FORM OF DIP TERM CREDIT AGREEMENT

WILLKIE DRAFT 7.7.2020

SENIOR SECURED SUPER PRIORITY
DEBTOR-IN-POSSESSION DELAYED DRAW TERM LOAN AGREEMENT
dated as of July [____], 2020,
among
TUESDAY MORNING CORPORATION,
as Holdings,
TUESDAY MORNING, INC.,
as Borrower,
THE GUARANTORS PARTY HERETO,
THE LENDERS PARTY HERETO,
and
FRANCHISE GROUP, INC.,
as Administrative Agent

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ANNEX A	Approved Budget

This SENIOR SECURED SUPER PRIORITY DEBTOR-IN-POSSESSION DELAYED DRAW TERM LOAN AGREEMENT dated as of July [____], 2020 (this “**Agreement**”), among TUESDAY MORNING, INC., a Texas corporation (the “**Borrower**”), each of the Subsidiary Guarantors (as hereinafter defined), TUESDAY MORNING CORPORATION, a Delaware corporation (“**Parent**”), TMI HOLDINGS, INC., a Delaware corporation (“**Intermediate Holdings**”), the LENDERS party hereto from time to time, FRANCHISE GROUP, INC., as administrative agent (in such capacity, the “**Administrative Agent**”).

RECITALS

WHEREAS, the Borrower and the Guarantors each commenced a voluntary case (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), and the Chapter 11 Cases are being jointly administered in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**Court**”) on May 27, 2020 (the “**Petition Date**”);

WHEREAS, from and after the Petition Date, the Borrower and the Guarantors continue to operate their business and manage their property as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, prior to the Petition Date, certain lenders provided financing to the Borrower pursuant to that certain Credit Agreement, dated as of August 18, 2015 by and among the Borrower, the other Loan Parties from time to time party thereto, JPMorgan Chase Bank, N.A., as administrative agent, the lenders from time to time party thereto (the “**Pre-Petition ABL Lenders**”), and the other parties from time to time party thereto (as amended, restated, modified, waived or supplemented through the date hereof, the “**Pre-Petition ABL Credit Agreement**”);

WHEREAS, the Borrower has requested, and, upon the terms and conditions set forth in this Agreement, the Lenders have agreed to make available to the Borrower, a senior secured, super-priority delayed draw term loan facility of up to \$25,000,000 in the aggregate to fund the working capital requirements of the Borrower and other transactions as more fully set forth in **Section 5.13** herein during the pendency of the Chapter 11 Cases;

WHEREAS, each Loan Party has agreed to secure all of the Obligations under the Loan Documents by granting to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, a security interest in and lien upon the Loan Parties’ Real Property (subject to the limitations and priorities contained in the Loan Documents and the Final Order);

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

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

WHEREAS, the Administrative Agent’s and the Lenders’ willingness to extend financial

accommodations to the Borrower as more fully set forth in this Agreement and the other Loan Documents, is done solely as an accommodation to the Loan Parties and at the Loan Parties' request and in furtherance of the Loan Parties' mutual and collective enterprise.

NOW THEREFORE, In consideration of the mutual covenants and agreements herein contained and of the loans, extensions of credit and commitments hereinafter referred to, the parties hereto agree as follows:

ARTICLE I

Definitions

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

“ABL DIP Agent” shall mean the “Administrative Agent” as defined in the ABL DIP Credit Agreement.

“ABL DIP Credit Agreement” shall mean that certain Senior Secured Super Priority Debtor-In-Possession Credit Agreement dated as of May 29, 2020 by and among the Borrower, Holdings, the guarantors party thereto, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent.

“ABL DIP Facility” shall mean the revolving credit commitments and the loans made under the ABL DIP Credit Agreement.

“ABL Facilities” shall mean, collectively, the ABL DIP Facility and the Pre-Petition ABL Facility.

“ABL DIP Lenders” shall mean, collectively, each “Lender” as defined in the ABL DIP Credit Agreement.

“ABL Obligations” shall mean the “ABL Obligations” as defined in the Intercreditor Agreement.

“Account” shall have the meaning as defined in the UCC, including all rights to payment for goods sold or leased, or for services rendered.

“Account Debtor” shall mean a Person who is obligated under an Account, Chattel Paper or General Intangible.

“Acquisition” shall mean, with respect to any Person, (a) an Investment in, or a purchase of a Controlling interest in, the Equity Interests of any other Person (whether by merger or consolidation of such Person with any other Person or otherwise) or (b) a purchase or other acquisition of all or substantially all of the assets or properties of another Person or of any business unit of another Person (whether by merger or consolidation of such Person with any other Person or otherwise).

“Administrative Agent” shall have the meaning assigned to such term in the introductory

paragraph of this Agreement.

“Administrative Questionnaire” shall mean an Administrative Questionnaire in form and substance reasonably satisfactory to the Administrative Agent.

“Affected Lender” shall have the meaning assigned to such term in **Section 2.17**.

“Affiliate” shall mean, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, neither the Administrative Agent nor any Lender shall be deemed to be an Affiliate of the Borrower or its Subsidiaries with respect to transactions evidenced by any Loan Document.

“Agent Indemnitees” shall mean the Administrative Agent and its officers, directors, employees, Affiliates, agents and attorneys.

“Agent Professionals” shall mean attorneys, accountants, appraisers, auditors, environmental engineers or consultants, and other professionals and experts retained by the Administrative Agent.

“Agreement” shall have the meaning assigned to such term in the introductory paragraph of this Agreement, as the same may from time to time be amended, modified, supplemented or restated.

“Agreement Currency” has the meaning assigned to such term in **Section 9.24**.

“Anti-Corruption Laws” shall mean all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery, corruption, money laundering, any predicate crime to money laundering or any financial record keeping or reporting requirements related thereto.

“Applicable Law” shall mean all applicable laws, rules, regulations and binding governmental requirements having the force and effect of law applicable to the Person in question or any of its property or assets, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

“Applicable Margin” shall mean 5.00% per annum.

“Approved Budget” shall mean the budget prepared by the Borrower in the form of Annex A and initially furnished to the Administrative Agent on the Closing Date and which is approved by, and in form and substance satisfactory to, the ABL DIP Agent in its sole discretion, as the same may be updated, modified or supplemented from time to time as provided in the ABL DIP Credit Agreement.

“Assignment and Acceptance” shall mean an assignment and acceptance entered into by a Lender and an assignee, and accepted by the Administrative Agent and the Borrower (if the Borrower’s consent is required by this Agreement), in the form of Exhibit A or such other form as

shall be approved by the Administrative Agent.

“Automatic Stay” shall mean the automatic stay provided under Section 362 of the Bankruptcy Code.

“Availability” shall have the meaning assigned to such term in the ABL DIP Credit Agreement.

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

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

“Bankruptcy Code” has the meaning set forth in the recitals to this Agreement

“Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure, as the same may from time to time be in effect and applicable to the Chapter 11 Cases.

“Benefit Plan” shall mean any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Beneficial Ownership Certification” shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” shall mean 31 C.F.R. § 1010.230.

“Board” shall mean the Board of Governors of the Federal Reserve System of the United States of America, or any successor thereto.

“Borrower” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Borrower Financial Advisor” shall mean AlixPartners, LLP.

“Borrower Sale Advisor” shall mean, collectively, Miller Buckfire & Co., LLC and its Affiliates.

“Borrowing” shall mean a group of Loans.

“Borrowing Base” shall mean the “Borrowing Base”, as such term is defined in the ABL DIP Credit Agreement as in effect as of the date hereof.

“Borrowing Request” shall mean a written request by the Borrower in accordance with

the terms of **Section 2.03** and, if written, substantially in the form of Exhibit C.

“Budget Compliance Report” shall have the meaning assigned to such term in Section 5.14(d).

“Business Day” shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law or other governmental action to remain closed; provided that when used in connection with a Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in deposits in Dollars in the London interbank market.

“Capital Lease Obligations” shall mean the obligations of any 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 or financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Case Milestones” shall have the meaning assigned to the term “Case Milestone” under (and as defined in) the ABL DIP Credit Agreement.

“Casualty Event” shall mean any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of the Borrower or any of its Subsidiaries.

“Change in Law” shall mean (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender (or, for purposes of **Section 2.12(b)**, by any Lending Office of such Lender or by such Lender’s holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Chapter 11 Cases” shall have the meaning assigned to such term in the recitals to this Agreement.

“Charges” shall have the meaning assigned to such term in **Section 9.09**.

“Chattel Paper” shall have the meaning set forth in Article 9 of the UCC.

“Claims” shall mean all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interests, costs and expenses of any kind (including remedial response

costs, reasonable attorneys' fees) at any time (including after Full Payment of the Obligations, resignation or replacement of the Administrative Agent or replacement of any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Loan Party or other Person, in any way relating to (a) any Loans, Loan Documents, or the use thereof or transactions relating thereto, (b) any action taken or omitted to be taken by an Indemnitee in connection with any Loan Documents, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or Applicable Law, or (e) failure by any Loan Party to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

"Closing Date" shall mean the date on which the conditions specified in Section 4.01 are satisfied.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Collateral" shall mean owned land and improvements at the Loan Parties' corporate headquarters and warehouse/distribution complex, each in Dallas County, Texas at the following addresses: (i) 14601 Inwood Rd, Addison, Texas 75001; (ii) 14603 Inwood Rd, Addison, Texas 75001; (iii) 14621 Inwood Rd, Addison, Texas 75001; (iv) 14639-14647 Inwood Rd, Addison, Texas 75001; (v) 4404 S. Beltwood Parkway, Farmers Branch, Texas 75244; (vi) 14303 Inwood Road, Farmers Branch, Texas, 75244; and (vii) 6250 LBJ Freeway, Dallas, Texas, 75240, and all real estate improvements thereto and all leases, rents, permits, records, and proceeds thereof. For the avoidance of doubt, each Mortgaged Property constitutes Collateral.

"Commitment" shall mean for any Lender, the commitment of such Lender to make Loans hereunder, as such commitment may be reduced from time to time pursuant to (a) Section 2.07 and (b) assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Commitment is set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Commitment, as applicable. **"Commitments"** shall mean the aggregate amount of such commitments of all Lenders, which shall be \$25,000,000 as of the Closing Date.

"Commodities Accounts" shall have the meaning assigned thereto in Article 9 of the UCC.

"Compliance Certificate" shall mean a certificate of a Financial Officer in substantially the form of Exhibit F.

"Conforming Amendment" has the meaning specified in Section 9.27(a).

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

"Copyrights" shall mean, with respect to any Person, all of such Person's right, title, and

interest in and to the following: (a) all copyrights, rights and interests in copyrights, works protectable by copyright, copyright registrations, and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights corresponding to any of the foregoing throughout the world.

“Court” has the meaning set forth in the recitals to this Agreement.

“Default” shall mean any event or condition that upon notice, lapse of time or both would constitute an Event of Default.

“Default Rate” shall have the meaning assigned to such term in **Section 2.10(b)**.

“Defaulting Lender” shall mean any Lender that (a) has failed to perform any funding obligations hereunder, and such failure is not cured within two (2) Business Days of the date of the funding obligation; (b) has notified the Administrative Agent or the Borrower that such Lender does not intend to comply with its funding obligations hereunder or generally under other agreements to which it commits to extend credit or has made a public statement to that effect; (c) has failed, within three (3) Business Days following written request by the Administrative Agent or the Borrower, to confirm in a manner reasonably satisfactory to the Administrative Agent and the Borrower that such Lender will comply with its funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this **clause (c)** upon receipt by the Administrative Agent of such confirmation); (d) has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding or taken any action in furtherance thereof, including, in the case of any Lender, the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such capacity; provided, however, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority’s ownership of any equity interest in such Lender or parent company so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of the courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender or (e) has become the subject of a Bail-in Action.

“Delayed Draw Term Loan” shall have the meaning assigned to such term in **Section 2.01(c)**.

“Delayed Draw Term Loan Conditions” shall have the meaning assigned to such term in **Section 2.01(c)**.

“Deposit Account” shall have the meaning assigned thereto in Article 9 of the UCC.

“Documents” shall have the meaning set forth in Article 9 of the UCC.

“Disposition” shall mean any sale, transfer, lease or other disposition (whether effected pursuant to a Division or otherwise) of assets. **“Dispose”** shall have a meaning correlative thereto.

“Dividing Person” has the meaning assigned to it in the definition of “Division”.

“Division” shall mean the division of the assets, liabilities and/or obligations of a Person (the **“Dividing Person”**) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Division Successor” shall mean any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

“Dollars” or **“\$”** shall mean lawful money of the United States of America.

“EEA Financial Institution” shall mean (a) any institution established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in **clause (a)** of this definition, or (c) any institution established in an EEA Member Country which is a subsidiary of an institution described in **clauses (a)** or **(b)** of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.

“EEA Resolution Authority” shall mean any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” shall mean (i) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof) and (ii) any commercial bank, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act) and which extends credit or buys loans.

“Enforcement Action” shall mean any action to enforce any Obligations or Loan Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, exercise of any right to vote or act in a Loan Party’s Insolvency Proceeding, or otherwise), in each case solely to the extent permitted by the Loan Documents.

“environment” shall mean ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna, the workplace or as otherwise defined in any Environmental Law.

“Environmental Laws” shall mean all laws (including common law), rules, regulations, codes, ordinances, orders, decrees or judgments, promulgated or entered into by or with any

Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or actual or alleged exposure to, any Hazardous Materials or to occupational health and safety (to the extent relating to the environment or Hazardous Materials).

“Equity Interests” of any Person shall mean any and all shares, interests, participations or other equivalents of or interests in (however designated) equity of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest and any and all warrants, rights or options to purchase or other rights to acquire any of the foregoing, but excluding for the avoidance of doubt any Indebtedness convertible into or exchangeable for any of the foregoing (until so converted or exchanged).

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended, or any successor statute and the rules and regulations promulgated thereunder.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 (m) or (o) of the Code.

“ERISA Event” shall mean (a) any Reportable Event; (b) the existence with respect to any Loan Party, any ERISA Affiliate or any Plan of a non-exempt Prohibited Transaction; (c) the failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA), applicable to such Plan, whether or not waived; (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (e) the receipt by any Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (f) the receipt by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, Insolvent, in Reorganization, or terminated (within the meaning of Section 4041A of ERISA); or (g) the failure by any Loan Party or any ERISA Affiliate to pay when due (after expiration of any applicable grace period) any installment payment with respect to Withdrawal Liability under Section 4201 of ERISA.

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

“Event of Default” shall have the meaning assigned to such term in **Section 7.01**.

“Excluded Accounts” shall mean any accounts used specifically, solely and exclusively as payroll, trust, tax withholding and employee benefit accounts, or accounts located outside of the U.S., in each case, maintained by Holdings or any of its Subsidiaries in the ordinary course of

business.

“Excluded Taxes” shall mean, with respect to the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income taxes imposed on (or measured by) its net income (or franchise taxes imposed in lieu of net income taxes) by any jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located or any other jurisdiction as a result of such recipient engaging in a trade or business in such jurisdiction for tax purposes (other than a trade or business arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document), (b) any branch profits tax or any similar tax that is imposed by any jurisdiction described in **clause (a)** above, (c) in the case of a Lender making a Loan to the Borrower, any U.S. federal withholding tax that (x) is in effect under Applicable Law and would apply to amounts payable hereunder to such Lender at the time such Lender becomes a party to such Loan to the Borrower (or designates a new Lending Office) except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Loan Party with respect to any U.S. federal withholding tax pursuant to **Section 2.14(a)** or **Section 2.14(c)** or (y) is attributable to such Lender’s failure to comply with **Section 2.14(e)** with respect to such Loan unless such failure to comply with **Section 2.14(e)** is a result of a change in law after the date such Lender becomes a party to such Loan to the Borrower (or designates a new Lending Office), (d) any interest, additions to taxes or penalties with respect to the foregoing and (e) any withholding taxes imposed pursuant to FATCA.

“Extended Maturity Date” shall have the meaning ascribed to it in **Section 2.12**.

“Extension Fee” shall mean an amount equal to sixty five hundredths of one percent (0.65%) of the Commitments.

“Extension Option” shall have the meaning as set forth in **Section 2.12**.

“FATCA” shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Effective Rate” shall mean, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; provided that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Fee Letter” shall mean that certain Fee Letter dated the Closing Date by and among the Borrower and the Administrative Agent.

“Final Order” shall mean an order of the Court in the Chapter 11 Cases, in form and substance satisfactory to the Administrative Agent in its sole discretion, authorizing and approving on a final basis, among other things, the borrowings by the Borrower under this Agreement.

“Financial Officer” of any Person shall mean the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such Person.

“Flood Laws” has the meaning given thereto in Section 8.17.

“Foreign Benefit Arrangement” shall mean any employee benefit arrangement mandated by non-U.S. law that is maintained or contributed to by any Loan Party or any ERISA Affiliate.

“Foreign Lender” shall mean any Lender that is not a U.S. Person.

“Foreign Plan” shall mean each employee benefit plan (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA) that is not subject to U.S. law and is maintained or contributed to by any Loan Party or any ERISA Affiliate.

“Foreign Plan Event” shall mean, with respect to any Foreign Benefit Arrangement or Foreign Plan, (a) the failure to make or, if applicable, accrue in accordance with normal accounting practices, any employer or employee contributions required by Applicable Law or by the terms of such Foreign Benefit Arrangement or Foreign Plan; (b) the failure to register or loss of good standing with applicable regulatory authorities of any such Foreign Benefit Arrangement or Foreign Plan required to be registered; or (c) the failure of any Foreign Benefit Arrangement or Foreign Plan to comply with any material provisions of Applicable Law and regulations or with the material terms of such Foreign Benefit Arrangement or Foreign Plan.

“Foreign Subsidiary” shall mean any Subsidiary that is incorporated or organized under the laws of any jurisdiction other than the United States of America, any State thereof or the District of Columbia.

“Full Payment” shall mean with respect to any of the Obligations, the full cash payment thereof (other than obligations for taxes, indemnification, charges and other inchoate or contingent or reimbursable liabilities for which no claim or demand for payment has been made or, in the case of indemnification, no notice has been given (or, in each case, reasonably satisfactory arrangements have otherwise been made)), including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in such proceeding). No Loans shall be deemed to have been paid in full until all Commitments related to such Loans have expired or been terminated.

“GAAP” shall mean generally accepted accounting principles in effect from time to time in the United States.

“General Intangibles” shall mean all “general intangibles” (as such term is defined in the UCC) of the Loan Parties.

“Governmental Authority” shall mean any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

“Guarantee” of or by any Person (the **“guarantor”**) shall mean any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the **“primary obligor”**) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided that the term **“Guarantee”** shall not include endorsements for collection or deposit in the ordinary course of business.

“Guaranteed Obligations” has the meaning assigned to such term in Section 11.01(a).

“guarantor” shall have the meaning assigned to such term in the definition of the term **“Guarantee.”**

“Guarantors” shall mean, collectively, Parent, Intermediate Holdings, the Subsidiary Guarantors and any other Loan Party (including the Borrower with respect to any Obligations of another Loan Party).

“Hazardous Materials” shall mean all pollutants, contaminants, wastes, chemicals, materials, substances and constituents of any nature which are subject to regulation by any Governmental Authority or which would reasonably be likely to give rise to liability under any Environmental Law, including, without limitation, explosive or radioactive substances or petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls or radon gas.

“Holdings” shall mean a collective reference to Parent and Intermediate Holdings, or, if Intermediate Holdings ceases to exist, shall mean Parent.

“IBA” shall have the meaning assigned to such term in **Section 1.08**.

“Indebtedness” of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability on a balance sheet prepared in accordance with GAAP, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (other than current intercompany liabilities (but not any refinancings, extensions, renewals or

replacements thereof) incurred in the ordinary course of business and maturing within three hundred sixty-five (365) days after the incurrence thereof), to the extent that the same would be required to be shown as a long term liability on a balance sheet prepared in accordance with GAAP, (e) all Guarantees by such Person of Indebtedness of others, (f) all Capital Lease Obligations of such Person, (g) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and (h) the principal component of all obligations of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof. The Indebtedness of the Borrower and the Subsidiaries shall exclude (i) accrued expenses and accounts and trade payables, (ii) liabilities under vendor agreements to the extent such indebtedness may be satisfied through non-cash means such as purchase volume earnings credits and (iii) reserves for deferred income taxes.

"Indemnified Taxes" shall mean all Taxes other than Excluded Taxes and Other Taxes.

"Indemnitee" shall have the meaning assigned to such term in **Section 9.05(b)**.

"Initial Maturity Date" shall mean April [8], 2021.

"Insolvency Proceeding" shall mean any case or proceeding commenced by or against a Person under any state, federal, provincial, territorial or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, bankruptcy, debtor relief or debt adjustment law; (b) the appointment of a receiver, interim receiver, monitor, trustee, liquidator, administrator, conservator, custodian or other similar Person for such Person or any part of its Property, including, in the case of any Lender, the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such capacity; or (c) an assignment for the benefit of creditors.

"Insolvent" with respect to any Multiemployer Plan, shall mean the condition that such plan is insolvent within the meaning of Section 4245 of ERISA.

"Insurance" shall mean all insurance policies covering any or all of the Collateral (regardless of whether the Administrative Agent is the loss payee thereof).

"Intellectual Property" shall mean the collective reference to all rights, priorities and privileges relating to intellectual property arising under United States laws, including the Copyrights, the Patents, the Trademarks, and the Licenses.

"Intercreditor Agreement" shall mean that certain Intercreditor Agreement, dated as of the date hereof and effective as of the date of entry of the Final Order, by and between the Administrative Agent, as the term administrative agent and JPMorgan Chase Bank, N.A., as the ABL administrative agent and acknowledged by the Loan Parties.

"Intermediate Holdings" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Investment" shall have the meaning assigned to such term in **Section 6.04**.

“**IRS**” shall mean the United States Internal Revenue Service.

“**Joinder Agreement**” shall mean a Joinder Agreement in substantially the form of **Exhibit E**.

“**Judgment Currency**” has the meaning assigned to such term in **Section 9.24**.

“**Lender**” shall mean each financial institution listed on **Schedule 2.01** (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with **Section 9.04**), as well as any Person that becomes a “Lender” hereunder in accordance with **Section 9.04**.

“**Lender Party**” shall mean the Administrative Agent or any other Lender.

“**Lending Office**” shall mean, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Loans.

“**LIBO Rate**” shall mean the greater of (a) one percent (1.00%), and (b) the London interbank offered rate per annum for three-month deposits of Dollars administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a three-month period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate) at approximately 11:00 a.m., London time, two (2) Business Days prior to the first day of such month or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. The LIBO Rate shall be determined on a monthly basis.

“**Licenses**” shall mean, with respect to any Person, all of such Person’s right, title, and interest in and to (a) any and all licensing agreements or similar arrangements in and to its Patents, Copyrights, or Trademarks, (b) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future breaches thereof, and (c) all rights to sue for past, present, and future breaches thereof.

“**Lien**” shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, hypothecation, pledge, encumbrance, charge or security interest in or on such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“**Loan Documents**” shall mean, collectively, this Agreement, any promissory notes issued pursuant to this Agreement, the Security Documents, the Intercreditor Agreement, all Approved Budgets, all Budget Compliance Reports, Compliance Certificates, and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby.

“Loan Guaranty” shall mean Article XI of this Agreement.

“Loan Parties” shall mean, collectively, the Borrower, the Guarantors, and any other Person who becomes a party to this Agreement pursuant to a Joinder Agreement and their successors and assigns, and the term “Loan Party” shall mean any one of them or all of them individually, as the context may require.

“Loans” shall mean the loans and advances made by the Lenders pursuant to Section 2.01 (including, for the avoidance of doubt, each Delayed Draw Term Loan).

“Local Time” shall mean Dallas time.

“Margin Stock” shall mean margin stock within the meaning of Regulations T, U and X, as applicable.

“Material Adverse Effect” shall mean a material adverse change in, or material adverse effect on, (a) the business, operations, Property, or financial condition of the Loan Parties, taken as a whole, other than any change, event, effect, or occurrence, arising individually or in the aggregate, solely from (i) events leading up to the commencement of the Chapter 11 Cases, (ii) events that would reasonably be expected to result from the filing or commencement of the Chapter 11 Cases or the announcement of the filing of the Chapter 11 Cases, or (iii) the commencement of the Chapter 11 Cases, (b) the ability of the Loan Parties to perform their obligations under the Loan Documents, taken as a whole, (c) the validity or enforceability of any Loan Document or (d) the rights and remedies of the Administrative Agent and the Lenders under the Loan Documents.²

“Material Agreement” shall mean, any contract or agreement pursuant to which Holdings or its Subsidiaries pays, receives or incurs liabilities (or could reasonably be expected to pay, receive or incur liabilities during the term thereof) in excess of \$5,000,000 in any twelve consecutive month period and if breached could reasonably be expected to cause a Material Adverse Effect.

“Material Indebtedness” shall mean, collectively, (i) the ABL Obligations and (ii) any Indebtedness (other than the Loans), of any one or more of Holdings and its Subsidiaries in an aggregate principal amount exceeding \$20,000,000.

“Maturity Date” shall mean the Initial Maturity Date, subject to extension pursuant to the Extension Option, in which case the Maturity Date shall mean the Extended Maturity Date (as defined in **Section 2.12** hereof).

“Maximum Rate” shall have the meaning assigned to such term in **Section 9.09**.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Mortgage” shall mean any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent

² NTD: We would be willing to make consistent with final definition in ABL facility.

and the other Secured Parties, on the Real Property, including any amendment, restatement, modification or supplement thereto.

“Mortgaged Property” and **“Mortgaged Properties”** shall have the meaning specified in Section 4.01(r).

“Multiemployer Plan” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding six (6) plan years made or accrued an obligation to make contributions.

“Net Proceeds” shall mean, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of Disposition of an asset (including pursuant to a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable) by any Loan Party and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer).

“Non-Consenting Lender” shall have the meaning assigned to such term in **Section 2.16(c)**.

“NYFRB” shall mean the Federal Reserve Bank of New York.

“NYFRB Rate” shall mean, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” shall mean the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Obligations” shall mean for purposes of the Loan Documents, all obligations of every nature of each Loan Party from time to time owed to the Administrative Agent or the Lenders, under any Loan Document, whether for principal, interest, fees, expenses, indemnification or otherwise.

“**OFAC**” shall mean the Office of Foreign Assets Control of the United States Department of the Treasury.

“**Other Facility Change**” shall have the meaning specified in Section 9.27(a).

“**Other Taxes**” shall mean any and all present or future stamp, court, intangible, recording, filing, documentary, excise, property or similar Taxes arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, the Loan Documents, and any and all interest and penalties related thereto.

“**Overnight Bank Funding Rate**” shall mean, for any day, the rate comprised of both overnight federal funds and overnight eurodollar borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“**Parent**” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“**Parent Entity**” shall mean any of (i) Holdings and (ii) any other Person of which Holdings is a Subsidiary.

“**Participant**” shall have the meaning assigned to such term in **Section 9.04(g)**.

“**Participant Register**” shall have the meaning assigned to such term in **Section 9.04(g)**.

“**Patents**” shall mean, with respect to any Person, all of such Person’s right, title, and interest in and to: (a) any and all patents and patent applications; (b) all inventions and improvements described and claimed therein; (c) all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights corresponding to any of the foregoing throughout the world.

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**Permitted Discretion**” shall mean a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset based lender) business judgment.

“**Permitted Investments**” shall mean:

(a) direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof, in each case with maturities not exceeding two (2) years;

(b) time deposit accounts, certificates of deposit and money market deposits

maturing within one hundred eighty (180) days of the date of acquisition thereof issued by a bank or trust company that is organized under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America having capital, surplus and undivided profits in excess of \$250.0 million and whose long-term debt, or whose parent holding company's long-term debt, is rated A (or such similar equivalent rating or higher by at least one (1) nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act));

(c) repurchase obligations with a term of not more than one hundred eighty (180) days for underlying securities of the types described in clause (a) above entered into with a bank meeting the qualifications described in clause (b) above;

(d) commercial paper, maturing not more than one (1) year after the date of acquisition, issued by a corporation organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of P-2 (or higher) according to Moody's, or A-1 (or higher) according to S&P;

(e) securities with maturities of two (2) years or less from the date of acquisition issued or fully guaranteed by any State, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least A by S&P or A by Moody's;

(f) shares of mutual funds whose investment guidelines restrict 95% of such funds' investments to those satisfying the provisions of clauses (a) through (e) above; and

(g) money market funds that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5.0 billion.

"Permitted Refinancing Indebtedness" shall mean any Indebtedness issued in exchange for, or the Net Proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to **"Refinance"**), the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); provided that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premium thereon, any committed or undrawn amounts and underwriting discounts, fees, commissions and expenses, associated with such Permitted Refinancing Indebtedness), except as otherwise permitted under **Section 6.01**, (b) other than with respect to Indebtedness permitted pursuant to **Section 6.01(g)**, such Permitted Refinancing Indebtedness has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being Refinanced, (c) if the Indebtedness being Refinanced is by its terms subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing Indebtedness shall be subordinated in right of payment to such Obligations on terms not materially less favorable to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced, taken as a whole, (d) no Permitted Refinancing Indebtedness shall have obligors or contingent

obligors that were not obligors or contingent obligors (or that would not have been required to become obligors or contingent obligors) in respect of the Indebtedness being Refinanced except to the extent otherwise permitted under **Section 6.01** or **Section 6.04** and (e) if the Indebtedness being Refinanced is (or would have been required to be) secured with any Collateral, such Permitted Refinancing Indebtedness shall be secured on a junior basis with respect to the Collateral pursuant to an intercreditor arrangement satisfactory to the Administrative Agent.

“Person” shall mean any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, individual or family trust, or other organization (whether or not a legal entity), or any government or any agency or political subdivision thereof.

“Petition Date” shall have the meaning assigned to such term in the recitals to this Agreement.

“Plan” shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4062 or Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan Asset Regulations” shall mean 29 CFR § 2510.3-101 *et seq.*, as modified by Section 3(42) of ERISA, as amended from time to time.

“Plan of Reorganization” shall mean a plan of reorganization confirmed by an order of the Court under the Chapter 11 Cases (i) containing a provision for Full Payment of all of the Obligations on or before the effective date of such plan and (ii) containing a release in favor of the Administrative Agent, the Lenders, and each of their respective affiliates, and such Plan of Reorganization shall be in full force and effect and shall not have been modified, altered, amended, or otherwise changed or supplemented without the prior written consent of the Administrative Agent and the Lenders.

“Pre-Petition ABL Agent” shall mean JPMorgan Chase Bank, N.A., in its capacity as administrative agent under any of the Pre-Petition ABL Loan Documents.

“Pre-Petition ABL Credit Agreement” has the meaning specified in the recitals to this Agreement.

“Pre-Petition ABL Facility” shall mean the revolving credit facility under the Pre-Petition ABL Credit Agreement.

“Pre-Petition ABL Lenders” has the meaning specified in the recitals to this Agreement.

“Pre-Petition ABL Loan Documents” shall mean the “Loan Documents” as defined in the Pre-Petition ABL Credit Agreement.

“primary obligor” shall have the meaning assigned to such term in the definition of “Guarantee.”

“Prime Rate” shall mean the prime rate of interest announced from time to time by the Administrative Agent (which is not necessarily the lowest rate charged to any customer), changing when and as said prime rate changes; provided that the Prime Rate shall never be less than 2.0%.

“Pro Rata” shall mean with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) while Commitments are outstanding, by dividing the amount of such Lender’s Commitment by the aggregate amount of all Commitments; and (b) at any other time, by dividing the amount of such Lender’s Loans by the aggregate amount of all outstanding Loans.

“Proceeds” shall mean all “proceeds” as such term is defined in Section 9-102(a)(64) of the UCC.

“Prohibited Transaction” shall have the meaning assigned to such term in Section 406 of ERISA and/or Section 4975(c) of the Code.

“Property” shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible (including cash, securities, accounts, contract rights and Equity Interests or other ownership interests of any Person), whether now in existence or owned or hereafter acquired.

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

“Qualified Capital Stock” shall mean any Equity Interest of any Person that does not by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) or upon the happening of any event (a) provide for scheduled payments of dividends in cash (other than at the option of the issuer) prior to the date that is, at the time of issuance of such Equity Interest, ninety-one (91) days after the Maturity Date, (b) become mandatorily redeemable at the option of the holder thereof (other than for Qualified Capital Stock or pursuant to customary provisions relating to redemption upon a change of control or sale of assets) pursuant to a sinking fund obligation or otherwise prior to the date that is, at the time of issuance of such Equity Interest, ninety-one (91) days after the Maturity Date or (c) become convertible or exchangeable at the option of the holder thereof for Indebtedness or Equity Interests that are not Qualified Capital Stock; provided further, that if any such Equity Interest is issued pursuant to a plan for the benefit of the employees, directors, officers, managers or consultants of Holdings (or any Parent Entity thereof), the Borrower or its Subsidiaries or by any such plan to such Persons, such Equity Interest shall not be regarded as an Equity Interest not constituting Qualified Capital Stock solely because it may be required to be repurchased by Holdings (any Parent Entity), the Borrower or its Subsidiaries in order to satisfy applicable regulatory obligations.

“Real Estate Sale” shall mean a sale, in one or a series of related transactions, of all or substantially all of (or, if approved in writing by Administrative Agent in its sole discretion, certain of) the Collateral under Section 363 of the Bankruptcy Code

“Real Estate Sale Order” shall mean an order approving the proposed Real Estate Sale.

“Real Property” shall have the meaning assigned to such term in Section 3.07.

“**Refinance**” shall have the meaning assigned to such term in the definition of the term “Permitted Refinancing Indebtedness,” “Refinancing” and “Refinanced” shall have meanings correlative thereto.

“**Register**” shall have the meaning assigned to such term in **Section 9.04(e)**.

“**Regulation D**” shall mean Regulation D of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation T**” shall mean Regulation T of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Related Fund**” shall mean, with respect to any Lender, any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities and is administered, advised or managed by (i) such Lender, (ii) an Affiliate of such Lender or (iii) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

“**Related Parties**” shall mean, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“**Release**” shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, emanating or migrating in, into, onto or through the environment. “Released” shall have a meaning correlative thereto.

“**Remedies Notice Period**” has the meaning specified in the Final Order.

“**Reorganization**” shall mean, with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

“**Report**” shall have the meaning assigned to such term in **Section 8.02(b)**.

“**Reportable Event**” shall mean any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code), other than those events as to which the thirty (30)-day notice period referred to in Section 4043(c) of ERISA has been waived.

“**Required Lenders**” shall mean, at any time, the Lenders holding more than 50% of the aggregate amount of Commitments and Loans outstanding at any time; provided, however, the

Commitments and Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that if the number of Lenders, excluding Defaulting Lenders, is greater than one (1) Lender (including any Lender's Affiliates as one (1) Person for this purpose), Required Lenders must include at least two (2) unaffiliated Lenders.

"Responsible Officer" of any Person shall mean any executive officer or Financial Officer of such Person and any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement.

"Restricted Payment" shall have the meaning assigned to such term in **Section 6.06**.

"S&P" shall mean Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"Sanctioned Country" shall mean, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, and Syria).

"Sanctioned Person" shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the or by the United Nations Security Council, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person directly or indirectly owned or controlled (individually or in the aggregate) by any such Person or Persons described in the foregoing **clauses (a)** or **(b)**, or (d) any Person otherwise the subject, or target, of any Sanctions.

"Sanctions" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (e) any other Governmental Authority with jurisdiction over any Loan Party or any of their respective Subsidiaries or Affiliates.

"SEC" shall mean the Securities and Exchange Commission or any successor thereto.

"Section 363 Sale" shall mean a sale of all or substantially all of the assets and business of the Loan Parties conducted pursuant to Section 363 of the Bankruptcy Code.

"Secured Parties" shall mean (a) the Administrative Agent, (b) the Lenders and (c) the successors and assigns of each of the foregoing.

"Securities" shall have the meaning assigned thereto in Article 8 of the UCC.

"Securities Account" shall have the meaning assigned thereto in Article 8 of the UCC.

"Securities Act" shall mean the Securities Act of 1933.

“Security Documents” shall mean, collectively, the Final Order, this Agreement, the Mortgages and any other agreements, instruments and documents executed by any Loan Party in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Obligations, including, without limitation, all other security agreements, pledge agreements, debentures, share charges, loan agreements, notes, pledges, powers of attorney, assignments, notices, and any financing statements whether theretofore, now or hereafter executed by any Loan Party and delivered to the Administrative Agent in connection with this Agreement.

“Specified Disposition Letter” shall mean that certain Consultant Agreement, dated as of May 6, 2020 by and among the Borrower and the Specified Liquidation Agent, as amended, supplemented, or modified from time to time with the consent of the ABL DIP Agent.

“Specified Liquidation Agent” shall mean, collectively, Great American Group, LLC and its Affiliates.

“Specified Store Closing Sales” shall mean the closure of certain of the Loan Parties’ stores as referenced in the Specified Disposition Letter conducted by the Specified Liquidation Agent pursuant to the Specified Disposition Letter.

“Status Calls” shall have the meanings assigned to such term in **Section 5.17**.

“subsidiary” shall mean, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, by the parent and/or one or more subsidiaries of the parent.

“Subsidiary” shall mean any direct or indirect subsidiary of the Borrower or a Loan Party, as applicable.

“Subsidiary Guarantor” shall mean each Loan Party other than Holdings.

“Taxes” shall mean any and all present or future taxes, levies, imposts, duties (including stamp duties), deductions, charges (including ad valorem charges), assessments, fees or withholdings imposed by any Governmental Authority and any and all interest and penalties related thereto.

“Termination Date” shall mean the earliest of (a) Maturity Date, (b) the date of consummation of a sale of all or substantially all of the Loan Parties’ assets under Section 363 or a plan under Section 1129 of the Bankruptcy Code, (c) the effective date of a Plan of Reorganization, (d) the date on which the Final Order is no longer in full force and effect, (e) the date on which the Obligations become due and payable pursuant to this Agreement, whether by acceleration or otherwise, and (f) the date which the Administrative Agent delivers written notice to the Borrower of its election, on account of the occurrence of an Event of Default, to accelerate

all Obligations hereunder.

“Test Period” shall mean, on any date of determination, the period of four (4) consecutive fiscal quarters (taken as one (1) accounting period) of the Borrower then most recently ended for which financial statements have been most recently delivered or were required to be delivered.

“Trademarks” shall mean, with respect to any Person, all of such Person’s right, title, and interest in and to the following: (a) all trademarks (including service marks), trade names, trade dress, and trade styles and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing; (b) all licenses of the foregoing, whether as licensee or licensor; (c) all renewals of the foregoing; (d) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights corresponding to any of the foregoing throughout the world.

“Transaction Costs” shall mean fees and expenses payable or otherwise borne by Holdings, any other Parent Entity, the Borrower and its Subsidiaries in connection with the Transactions occurring on or about the Closing Date.

“Transactions” shall mean, collectively, the transactions to occur pursuant to the Loan Documents, including the execution and delivery of the Loan Documents and the initial borrowings hereunder.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or in any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

“U.S. Person” shall mean any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“USA PATRIOT Act” shall mean The Uniting and Strengthening America by Providing Adequate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107 56 (signed into law October 26, 2001)).

“U.S. Tax Compliance Certificate” shall have the meaning assigned to such term in **Section 2.14(e)(i)(B)(3).**

“U.S. Trustee” shall mean the United States Trustee applicable in the Chapter 11 Cases.

“Weighted Average Life to Maturity” shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the product obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including a payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth that will elapse between such date and the making of such payment); by (b) the outstanding principal amount of such Indebtedness.

“WF Concentration Account” shall mean the Borrower’s Main Concentration Account No.: 4000035063 held at Wells Fargo Bank, National Association.

“Withdrawal Liability” shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Write-Down and Conversion Powers” shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02 Terms Generally.

(a) The definitions set forth or referred to in **Section 1.01** shall apply equally to both the singular and plural forms of the terms defined. The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, the Loan Documents in which the reference appears unless the context shall otherwise require.

(b) Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document or other document, agreement or instrument (including any by-laws, limited partnership agreement, limited liability company agreement, articles of incorporation, certificate of limited partnership or certificate of formation, as the case may be) shall mean such Loan Document, agreement or instrument as amended, restated, amended and restated, supplemented, otherwise modified, replaced, renewed, extended or refinanced from time to time and any reference in this Agreement to any Person shall include a reference to such Person’s permitted assigns and successors-in-interest.

(c) Unless otherwise defined herein, the following terms are used herein as defined in the UCC (and if defined in more than one Article of the UCC, such terms shall have the meanings given in Article 9 thereof): Account Debtor, Documents, Deposit Account, General Intangibles, Letter of Credit, Securities Account and Security.

(d) Unless otherwise defined herein, the following terms are used herein as defined in the Approved Budget: Total Cash Receipts, Total Non-Operating Disbursements, Total Operating Disbursements and Professional Fees.

Section 1.03 Accounting Terms.

(a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the

Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith; provided further that if an amendment is requested by the Borrower or the Required Lenders, then the Borrower and the Administrative Agent shall negotiate in good faith to enter into an amendment of such affected provisions (without the payment of any amendment or similar fees to the Lenders) to preserve the original intent thereof in light of such change in GAAP or the application thereof subject to the approval of the Required Lenders (not to be unreasonably withheld, conditioned or delayed); provided further that all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to (i) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value," as defined therein and (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(b) Notwithstanding anything to the contrary contained in paragraph (a) above or the definition of Capital Lease Obligations, in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that they were in existence on the date hereof) that would constitute Capital Lease Obligations on the date hereof shall be considered Capital Lease Obligations and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith (provided that all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of such accounting change shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such accounting change).

Section 1.04 Rounding. Except as otherwise expressly provided herein, any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one (1) place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

Section 1.05 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day (other than as described in the definition of Prime Rate or NYFRB Rate), the date of such payment or performance shall extend to the immediately succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be.

Section 1.06 Classification. For purposes of determining compliance at any time with Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07 and 6.09, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, contractual restriction or prepayment of Indebtedness meets the criteria of more than one (1) of the categories of transactions or items permitted pursuant to any clause of such Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07 and 6.09, the Borrower, in its sole discretion, may classify or reclassify such transaction or item (or portion thereof) and will only be required to include the amount and type of such transaction (or portion thereof) in any one (1) category.

Section 1.07 References to Laws. Unless otherwise expressly provided herein, references to any law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law.

Section 1.08 Interest Rates; LIBOR Notification. The interest rate on Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the “IBA”) for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate is no longer available or in certain other circumstances as set forth in Section 2.11(b) of this Agreement, such Section 2.11(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Borrower, pursuant to Section 2.11 in advance of any change to the reference rate upon which the interest rate on Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of “LIBO Rate” or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate, as it may or may not be adjusted pursuant to Section 2.11(b), will be similar to, or produce the same value or economic equivalence of, the LIBO Rate or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

ARTICLE II

The Commitments and Borrowings

Section 2.01 The Loans.

(a) Each Lender agrees, severally on a Pro Rata basis, on the terms set forth herein, to make Loans to the Borrower in an amount not to exceed such Lender’s Commitment.

(b) Notwithstanding the foregoing,

(i) Each Loan that is made shall automatically and permanently reduce the aggregate Commitments and the Commitment of each Lender. Amounts borrowed under this Section 2.01 and subsequently repaid or prepaid may not be reborrowed. The maximum amount of Loans the Lenders are committed to advance to the Borrower at any time shall be subject to and limited by the terms of the Final Order and the Approved Budget.

(c) The obligation of the Lenders to provide Loans on any date after the Closing Date (each such Loan, a “Delayed Draw Term Loan”) shall be subject to the satisfaction on the date of the borrowing of such Delayed Draw Term Loan of each of the following conditions (the “Delayed Draw Term Loan Conditions”):

(i) (A) The Final Order shall have been entered in form and substance acceptable to the Administrative Agent; (B) the Final Order shall not have been vacated, stayed, reversed, modified, or amended without the Administrative Agent’s consent and shall otherwise be in full force and effect; and (C) no motion for reconsideration of the Final Order shall have been timely filed by a Loan Party of any of their Subsidiaries;

(ii) immediately before and after giving effect to the borrowing of Delayed Draw Term Loans and the use of the proceeds thereof, no Default or Event of Default shall exist;

(iii) the Borrower shall have delivered to the Administrative Agent a Borrowing Request requesting such Delayed Draw Term Loans no less than three (3) Business Days prior to the desired funding date therefor;

(iv) each extension of Delayed Draw Term Loans shall be in a minimum amount of \$2,500,000; and

(v) the representations and warranties of each Loan Party set forth in **Article III** of this Agreement or in any other Loan Document shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) on the date of, and upon giving effect to, such funding (except for representations and warranties that expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as such earlier date).

Section 2.02 Loans and Borrowings. All Loans shall be made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder.

Section 2.03 Requests for Borrowings and Notices.

(a) To request a Borrowing of Delayed Draw Term Loans, the Borrower shall notify the Administrative Agent of such request by telephone not later than 12:00 p.m., Local Time, three (3) Business Days before the date of the proposed Borrowing. Such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, fax or other electronic transmission (including by “.pdf” or “.tif”) to the Administrative Agent of a

written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Such telephonic and written Borrowing Request shall specify the following information in compliance with **Section 2.02**:

- (i) the aggregate amount of the requested Borrowing; and
- (ii) the date of such Borrowing, which shall be a Business Day.

(b) Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04 [Reserved].

Section 2.05 Funding of Borrowings.

(a) Each Lender shall make a Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 1:00 p.m., Local Time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make the proceeds of such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to the WF Concentration Account.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the date of the Borrowing Request that such Lender will not make available to the Administrative Agent such Lender's share of the Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with **paragraph (a)** of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower agrees to pay to the Administrative Agent (provided, that any such payment by the Borrower to the Administrative Agent is without prejudice to any claim the Borrower may have against such applicable Lender) forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to all Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

Section 2.06 Reserved.

Section 2.07 Repayment of Loans; Termination of Commitments.

(a) Subject to the Approved Budget, the Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior written notice not later than 2:00 p.m. (Local time) two Business Days before the date of such prepayment.

(b) Loans shall be due and payable in full on the Termination Date, unless payment is sooner required hereunder. Subject to the Approved Budget, Loans may be prepaid from time to time, without penalty or premium.

(c) Subject to the Intercreditor Agreement, contemporaneously with each date upon which the Borrower or any of its Subsidiaries receives any cash proceeds from any Real Estate Sale with respect to the Collateral, an amount equal to 100% of the Net Proceeds therefrom shall be applied as a mandatory repayment in accordance with the requirements of Section 2.07(g).

(d) Subject to the Intercreditor Agreement, contemporaneously with each date upon which the Borrower or any of its Subsidiaries receives any cash proceeds from any Casualty Event with respect to the Collateral, (i) if an Event of Default has occurred and is continuing, an amount equal to 100% of the Net Proceeds therefrom shall be applied as a mandatory repayment in accordance with the requirements of Section 2.07(g), (ii) so long as no Event of Default has occurred and is continuing, (A) if the Net Proceeds therefrom are in an amount less than \$1,000,000, the Administrative Agent shall permit such Net Proceeds to be disbursed to the Borrower from the WF Concentration Account or such other account into which the Net Proceeds were received for purposes of reconstructing, repairing or restoring the Collateral, (B) if the Net Proceeds therefrom are in an amount greater than \$1,000,000 but less than \$5,000,000, the Administrative Agent shall permit such Net Proceeds to be disbursed to the Borrower from the WF Concentration Account or such other account into which the Net Proceeds were received for purposes of reconstructing, repairing or restoring the Collateral, provided, that the Borrower has provided reasonably detailed evidence of the damage and repairs to the Administrative Agent prior to the disbursement of such Net Proceeds, and (C) if the Net Proceeds therefrom are in an amount greater than \$5,000,000, then the amount in excess of \$5,000,000 shall be applied as a mandatory repayment in accordance with the requirements of Section 2.07(g); provided, that other than as set forth in clauses (i) and (ii) above, the Borrower shall be entitled to settle any and all of Borrower's insurance claims and collect the proceeds thereof.

(e) Within five (5) Business Days following each date upon which the Borrower or any of its Subsidiaries receives any cash proceeds from any issuance or incurrence of Indebtedness secured by the Collateral (other than Indebtedness permitted to be incurred pursuant to Section 6.01), an amount equal to 100% of the Net Proceeds therefrom shall be applied as a mandatory repayment in accordance with the requirements of Section 2.07(g).

(f) The Commitments shall be automatically and permanently reduced upon any incurrence of Loans by the principal amount of such Loans so extended hereunder. The Commitments shall terminate on the Termination Date, unless sooner terminated in accordance with this Agreement.

(g) Each prepayment of Borrowings pursuant to this Section 2.07 shall be applied ratably among the parties entitled thereto.

(h) Prepayments permitted or required under this Section 2.07 shall be without premium or penalty.

Section 2.08 Evidence of Debt.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(c) The entries made in the accounts maintained pursuant to paragraph (d) of this Section shall be, absent manifest error, prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement; and, provided, further that in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(d) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

Section 2.09 Fees.

(a) Fee Letter. The Borrower agrees to pay the fees set forth in the Fee Letter, in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(b) Generally. All such fees shall be paid on the dates due, in immediately available Dollars. Once paid, none of these fees shall be refundable under any circumstances.

Section 2.10 Interest.

(a) The Loans comprising each Borrowing shall bear interest at the LIBO Rate plus the Applicable Margin.

(b) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fees or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise or if any Event of Default has occurred and is continuing, all overdue amounts shall automatically bear interest, after as well as before judgment, at a rate per annum equal to 2.00% plus the rate otherwise applicable to such Obligation (the "**Default Rate**"); *provided, however*, the Default Rate shall only be applicable after five (5) days written notice to Borrower and then only to the extent that such Event of Default remains uncured after the expiration of such five (5) day period.

(c) Accrued interest on each Loan shall be payable in arrears (i) on the last Business Day of each month until the Obligations have been paid in full, commencing July 31, 2020 and (ii) on the Termination Date; provided that interest accrued pursuant to **paragraph (b)** of this Section shall be payable on demand.

(d) All interest hereunder shall be computed on the basis of a year of three hundred sixty (360) days. The applicable Prime Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Section 2.11 Alternate Rate of Interest. (a) If prior to a Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the LIBO Rate; or

(ii) the Administrative Agent is advised by the Required Lenders that the LIBO Rate will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing;

then the Administrative Agent shall give written notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, such Borrowing shall be made as a Loan bearing interest at a rate determined by reference to the Prime Rate.

(b) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that the circumstances set forth in **clause (a)(i)** have arisen and such circumstances are unlikely to be temporary, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin); provided that, if such alternate rate of interest as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in **Section 9.08**, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this **clause (b)**, such Borrowing shall be made as a Loan bearing interest at a rate determined by reference to the Prime Rate.

Section 2.12 Extension Option. Borrower, at its option, may request to extend the Maturity Date (the “**Extension Option**”) to the date that is three (3) months from the Initial Maturity Date (the “**Extended Maturity Date**”). Borrower must notify Administrative Agent of such request by written notice at least thirty (30) days prior to the Initial Maturity Date. For the Extension Option to be effective (i) no Default or Event of Default shall have occurred and be

continuing on either the date the Borrower requests to extend the Maturity Date or on the Initial Maturity Date; (ii) on the Initial Maturity Date, as applicable, the conditions as set forth under **Section 4.02**, as applicable, must be satisfied; and (iii) in connection with the exercise of the Extension Option, Borrower shall pay to Administrative Agent for the benefit of the Lenders the fully earned, non-refundable Extension Fee at the time of such exercise.

Section 2.13 [Reserved].

Section 2.14 Taxes.

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

(b) In addition, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Each Loan Party shall indemnify the Administrative Agent and each Lender, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, as applicable, on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto. A certificate as to the amount of such payment or liability, prepared in good faith and delivered to such Loan Party by a Lender or by the Administrative Agent on its own behalf, on behalf of another agent or on behalf of a Lender, shall be conclusive absent manifest error.

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

(e) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably

requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two (2) sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 2.14(e)(ii)(A), (ii)(B) and (ii)(D)** below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

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

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

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

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

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2

or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one (1) or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

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

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) If the Administrative Agent or a Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.14, it shall pay over such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.14 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent or Lender and in its sole discretion, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in

the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **paragraph (f)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **paragraph (f)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **Section 2.14(f)** shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Loan Parties or any other Person.

(g) Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Taxes and without limiting the obligation of the Loan Parties to do so) and (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 9.04(c)** relating to the maintenance of a Participant Register, in either case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this **paragraph (g)**.

Section 2.15 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Unless otherwise specified, the Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or of amounts payable under **Section 2.12** or **2.14**, or otherwise) prior to 2:00 p.m., Local Time, on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Borrower by the Administrative Agent. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. All payments hereunder shall be made in Dollars. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) Any proceeds of Collateral received by the Administrative Agent not constituting either a specific payment of principal, interest, fees or other sum payable under the Loan Documents shall be applied ratably:

(i) first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Administrative Agent from the Borrower,

(ii) second, to pay any fees or expense reimbursements then due to the Lenders from the Borrower,

(iii) third, to pay interest then due and payable on the Loans ratably,

(iv) fourth, to prepay principal on the Loans, and

(v) fifth, to the payment of any other Obligation due to the Administrative Agent or any Lender by the Borrower.

(c) [Reserved].

(d) If (other than (x)) any payment obtained by a Lender as consideration for the assignment or sale of a participation in any of its Loans to any assignee or participant, including any assignee or participation that is a Loan Party or any of its Affiliates or (y) as otherwise expressly provided elsewhere herein, including, without limitation, as provided in or contemplated by **Section 9.04(f)** any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this **paragraph (d)** shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(e) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) If any Lender shall fail to make any payment required to be made by it pursuant to **Section 2.05(b)** or **Section 2.15(e)**, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

(g) Each borrowing by the Borrower from the Lenders hereunder shall be made pro rata according to the respective Commitments of the relevant Lenders.

Section 2.16 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under **Section 2.12**, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 2.14**, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 2.12** or **2.14**, as applicable, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under **Section 2.12**, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 2.14**, or if any Lender is a Defaulting Lender or becomes an Affected Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (i) terminate the Commitments of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date or (ii) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in **Section 9.04**), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iii) in the case of any such assignment resulting from a claim for compensation under **Section 2.12** or payments required to be made pursuant to **Section 2.14**, such assignment will result in a reduction in such compensation or payments, (iv) [reserved], (v) such assignment shall otherwise comply with **Section 9.04** (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein) and (vi) until such time as such Commitments are terminated, obligations are repaid or such assignment is consummated, the Borrower shall pay all additional amounts (if any) required pursuant to **Section 2.12** or **Section 2.14**, as the case may be. Nothing in this **Section 2.16** shall be deemed to prejudice any rights that the Borrower, the Administrative Agent or any Lender may have against any replaced Lender. Each Lender hereby

grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender as assignor, any Assignment and Acceptance necessary to effectuate any assignment of such Lender's interests hereunder in the circumstances contemplated by this **Section 2.16(b)**.

(c) If any Lender (such Lender, a "**Non-Consenting Lender**") has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of **Section 9.08** requires the consent of all of the Lenders or all of the Lenders affected and with respect to which the Required Lenders shall have granted their consent, then the Borrower shall have the right (unless such Non-Consenting Lender grants such consent) to replace such Non-Consenting Lender by (i) terminating the Commitments of such Lender and repaying all obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date or (ii) requiring such Non-Consenting Lender to assign (in accordance with and subject to the restrictions contained in **Section 9.04**) all or the affected portion of its Loans and its Commitments hereunder to one (1) or more assignees, provided that: (a) all Obligations of the Borrower owing to such Non-Consenting Lender being replaced shall be paid in full to such Non-Consenting Lender concurrently with such assignment, (b) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon, (c) [reserved], (d) such assignment shall otherwise comply with **Section 9.04** (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein) and (e) the replacement Lender shall grant its consent with respect to the applicable proposed amendment, waiver, discharge or termination. Each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender as assignor, any Assignment and Acceptance necessary to effectuate any assignment of such Lender's interests hereunder in the circumstances contemplated by this **Section 2.16(c)**.

Section 2.17 Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Loans, then, on notice thereof by such Lender to the Borrower through the Administrative Agent (at which time such Lender shall be deemed an "**Affected Lender**"), any obligations of such Affected Lender to make Loans shall be suspended until such Affected Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, interest on the Loans shall accrue and be payable at the Prime Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 2.18 Defaulting Lenders.

(a) **Reallocation of Pro Rata Share; Amendments.** For purposes of determining the Lenders' obligations to fund or acquire participations in Loans, the Administrative Agent may exclude the Commitments and Loans of any Defaulting Lender(s) from the calculation of Pro Rata shares and any Commitments of any such Defaulting Lender shall automatically be reallocated among the non-Defaulting Lenders Pro Rata in accordance with their Commitments up to an amount such that the Commitment of each non-Defaulting Lender does not exceed its Commitments, so long as the conditions set forth in **Section 4.02** are satisfied at the time of such

reallocation. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in **Section 9.08**.

(b) **Payments; Fees.** Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of a Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Article VII** or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to **Section 9.06**), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent or the Borrower, to be held in a deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *fifth*, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; **provided** that if (x) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made at a time when the conditions set forth in **Section 4.02** were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a Pro Rata basis prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this **Section 2.18(b)** shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto. A Lender shall not be entitled to receive any fees accruing hereunder during the period in which it is a Defaulting Lender.

(c) **Cure.** The Borrower and the Administrative Agent may agree in writing that a Lender is no longer a Defaulting Lender. At such time, Pro Rata shares shall be reallocated without exclusion of such Lender's Commitments and Loans, and all outstanding Loans and other exposures under the Commitments shall be reallocated among the Lenders and settled by the Administrative Agent (with appropriate payments by the reinstated Lender) in accordance with the readjusted Pro Rata shares. Unless expressly agreed in writing by the Borrower and the Administrative Agent (each of which shall make such determination, in its sole discretion), no reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan or otherwise to perform its obligations hereunder shall not relieve any other Lender of its obligations, and no Lender shall be responsible for default by another Lender. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender's increased exposure following such reallocation.

ARTICLE III

Representations and Warranties

Each of Holdings (solely to the extent applicable to it) and each other Loan Party represents and warrants to the Administrative Agent and each of the Lenders that:

Section 3.01 Organization; Powers. Subject to any restriction arising on account of each Loan Party's status as a "debtor" under the Bankruptcy Code and any required approvals of the Court, each of Holdings, the Borrower and each of the Subsidiaries (a) is a limited partnership, limited liability company or corporation duly organized, validly existing and in good standing (or, if applicable in a foreign jurisdiction, enjoys the equivalent status under the laws of any jurisdiction of organization outside the United States) under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted, (c) is qualified to do business and in good standing in each jurisdiction where such qualification is required; except in each case referred to in this **Section 3.01** (other than in **clause (a)** and **clause (b)**, respectively, with respect to the Borrower), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 3.02 Authorization. Subject to the entry of the Final Order, the execution, delivery and performance by Holdings, the Borrower and each of the Subsidiary Guarantors of each of the Loan Documents to which it is a party, and the borrowings hereunder, the transactions forming a part of the Transactions and the payment of the Transaction Costs (a) have been duly authorized by all corporate, stockholder, limited partnership or limited liability company action required to be obtained by Holdings, the Borrower and such Subsidiary Guarantors and (b) other than violations arising as a result of the commencement of, or otherwise related to, Chapter 11 Cases or where enforcement is stayed as upon commencement of the Chapter 11 Cases or as otherwise excused by the Court, will not (i) violate (A) any provision of (x) law, statute, rule or regulation applicable to such party, or (y) of the certificate or articles of incorporation or other constitutive documents or by-laws of Holdings, the Borrower or any such Subsidiary Guarantor, (B) any applicable order of any court or any rule, regulation or order of any Governmental Authority or (C) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which Holdings, the Borrower or any such Subsidiary Guarantor is a party or by which any of them or any of their property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under any such indenture, certificate of designation for preferred stock, agreement or other instrument, where any such conflict, violation, breach or default referred to in **clause (b)(i)(A)(x)**, **(b)(i)(B)**, **(b)(i)(C)** or **(b)(ii)** of this **Section 3.02**, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by Holdings, the Borrower or any such Subsidiary Guarantor, other than the Liens created by the Loan Documents and Liens permitted by **Section 6.02** hereof.

Section 3.03 Enforceability. Subject to the entry of the Final Order, this Agreement has been duly executed and delivered by Holdings and the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such

Loan Party in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) implied covenants of good faith and fair dealing.

Section 3.04 Governmental Approvals. Other than violations arising as a result of the commencement of, or otherwise related to, the Chapter 11 Cases or where enforcement is stayed as upon commencement of the Chapter 11 Cases or as otherwise excused by the Court, no action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Transactions and the payment of the Transaction Costs, except for (a) recordation of the Mortgages, (b) such as have been made or obtained and are in full force and effect and (c) such actions, consents, approvals, registrations or filings the failure to be obtained or made which could not reasonably be expected to have a Material Adverse Effect.

Section 3.05 Financial Condition.

(a) All financial statements of the Loan Parties that have been or may hereafter be delivered by any Loan Party to the Administrative Agent and/or the Lenders present fairly, in all material respects, the consolidated financial condition and results of operations and cash flows of the Borrower and its Subsidiaries as of the date(s) and for the period(s) thereof in accordance with GAAP.

(b) No Loan Party or any Subsidiary has on the date hereof any material Indebtedness or any material contingent liabilities, off-balance sheet liabilities or liabilities for Taxes, except as referred to or reflected or provided for in the Approved Budget, the "first day" orders or the financial statements of the Loan Parties or their Subsidiaries previously delivered to the Lenders.

Section 3.06 No Material Adverse Effect. Since the Petition Date, no event, development, circumstance or change has occurred that has or would reasonably be expected to have a Material Adverse Effect.

Section 3.07 Properties. As of the date of this Agreement, **Schedule 3.07** sets forth the address of each parcel of real property that is owned by any Loan Party (collectively, the "**Real Property**"). Each of the Loan Parties and each of its Subsidiaries has good and indefeasible title to all of its material real and personal property, free of all Liens other than those permitted by Section 6.02.

Section 3.08 Capitalization and Subsidiaries. **Schedule 3.08** sets forth as of the Closing Date (a) a correct and complete list of the name and relationship to Holdings of each and all of Holding's Subsidiaries, (b) a true and complete listing of each class of the authorized Equity Interests of all Loan Parties, all of which issued Equity Interests are validly issued, outstanding, fully paid and non-assessable, and, other than with respect to Holdings, owned beneficially and of record by the Persons identified on Schedule 3.08, and (c) the type of entity of each Loan Party. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and

issued and are fully paid and non-assessable. There are no outstanding commitments or other obligations of any Loan Party to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of such Loan Party. Holdings has no Foreign Subsidiaries.

Section 3.09 Litigation; Compliance with Laws.

(a) Except the Chapter 11 Cases, there are no actions, suits, investigations or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending against, or to the knowledge of Holdings or the Borrower threatened in writing against, Holdings or the Borrower or any of the Subsidiaries or any business, property or rights of any such Person (i) that involve any Loan Document, the Transactions or the payment of the Transaction Costs or (ii) that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) None of Holdings, the Borrower, the Subsidiaries or their respective properties or assets is in violation of any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permit, but excluding any Environmental Laws that are the subject of **Section 3.16**) or any restriction of record or agreement affecting any owned Real Property or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect unless non-compliance therewith is permitted by any applicable Governmental Authority (including any order of the Court) or as a result of the commencement of the Chapter 11 Cases.

Section 3.10 Investment Company Act. None of Holdings, the Borrower or any Subsidiary is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 3.11 Use of Proceeds. The proceeds of the Loans have been used and will be used, whether directly or indirectly, as set forth in Section 5.13.

Section 3.12 Federal Reserve Regulations.

(a) None of Holdings, the Borrower or any Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally incurred for such purpose, or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

Section 3.13 Tax.

(a) Each of Holdings, the Borrower and its Subsidiaries has filed or caused to

be filed all U.S. federal, state, local and non-U.S. Tax returns required to have been filed by it that are material to such companies, taken as a whole, and each such Tax return is true and correct in all material respects;

(b) Each of Holdings, the Borrower and its Subsidiaries has timely paid or caused to be timely paid all Taxes shown to be due and payable by it on the returns referred to in clause (a) and all other material Taxes or assessments (except Taxes for which payment is stayed or excused under the Bankruptcy Code or assessments that are being contested in good faith by appropriate proceedings in accordance with Section 5.03 and for which Holdings, the Borrower or any of its Subsidiaries (as the case may be) has set aside on its books adequate reserves (in accordance with GAAP)); and

(c) With respect to each of Holdings, the Borrower and its Subsidiaries, no tax lien has been filed, and, to the knowledge of the Borrower and its Subsidiaries, no claim is being asserted, with respect to any such Taxes.

Section 3.14 Disclosure.

(a) The Loan Parties have disclosed to the Lenders all material agreements, instruments and corporate or other restrictions to which any Loan Party or any Subsidiary is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Closing Date, as of the Closing Date.

(b) As of the Closing Date and solely to the extent such Beneficial Ownership Certification has been requested by the Administrative Agent, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Closing Date to any Lender in connection with this Agreement is true and correct in all material respects.

Section 3.15 Employee Benefit Plans.

(a) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) each Loan Party and each ERISA Affiliate is in compliance with the applicable provisions of ERISA and the provisions of the Code relating to Plans and the regulations and published interpretations thereunder; and (ii) no ERISA Event has occurred or is reasonably expected to occur; the present value of all accumulated benefit obligations under each Plan (based on those assumptions used for purposes of Accounting Standards Codification No. 715: Compensation Retirement Benefits) did not, as of the date of the

most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan allocable to such accrued benefits and the present value of all accrued benefit obligations of all underfunded Plans did not, as of the date of the most recent financial statements reflecting such amounts, exceed the value of the assets of all such underfunded Plans.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no Foreign Plan Event has occurred.

Section 3.16 Environmental Matters. Except as to matters that could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) no written notice of violation, request for information, order, complaint or assertion of penalty has been received by the Borrower or any of the Subsidiaries, and there are no judicial, administrative or other actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened which allege a violation of or liability under any Environmental Laws or concerning Hazardous Materials, in each case relating to the Borrower or any of the Subsidiaries, (ii) the Borrower and the Subsidiaries has all permits necessary for its operations to comply with all applicable Environmental Laws and is, and during the term of all applicable statutes of limitation, has been, in compliance with the terms of such permits and with all other applicable Environmental Laws, (iii) no Hazardous Material is located at any property currently owned by the Borrower or any of the Subsidiaries in quantities or concentrations that would reasonably be expected to give rise to any liability or obligation of the Borrower or any of the Subsidiaries under any Environmental Laws, and no Hazardous Material has been generated by or on behalf of the Borrower or any of the Subsidiaries that has been transported to or Released at or from any location in a manner that would reasonably be expected to give rise to any liability or obligation of the Borrower or any of the Subsidiaries, and (iv) there is no agreement to which the Borrower or any of the Subsidiaries is a party in which the Borrower or any of the Subsidiaries has assumed or undertaken, or retained, responsibility for any known or reasonably likely liability or obligation arising under or relating to Environmental Laws.

Section 3.17 Security Documents. [Reserved].

Section 3.18 Affiliate Transactions. Except as permitted by Section 6.07, there are no existing agreements, arrangements or transactions between any Loan Party and any of its Affiliates (other than the Borrower or any of its Subsidiaries).

Section 3.19 Labor Matters. Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes pending or, to the knowledge of Holdings or the Borrower, threatened in writing against the Borrower or any of the Subsidiaries; (b) the hours worked and payments made to employees of the Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other Applicable Law dealing with such matters; (c) all Persons treated as contractors by the Borrower and the Subsidiaries are properly categorized as such, and not as employees, under Applicable Law; and (d) all payments due from the Borrower or any of the Subsidiaries or for which any claim may be made against the Borrower or any of the Subsidiaries, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of the Borrower or such Subsidiary to the extent required by GAAP. Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect the consummation of the Transactions and the payment of the Transaction Costs will not

give rise to a right of termination or right of renegotiation on the part of any union under any material collective bargaining agreement to which the Borrower or any of its Subsidiaries (or any predecessor) is a party or by which Holdings, the Borrower or any of its Subsidiaries (or any predecessor) is bound.

Section 3.20 Insurance. **Schedule 3.20** sets forth a true, complete and correct description of all material insurance maintained by or on behalf of Holdings, the Borrower or the Subsidiaries as of the Closing Date. Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, as of such date, to the knowledge of the Borrower and its Subsidiaries such insurance is in full force and effect.

Section 3.21 USA PATRIOT Act and OFAC.

(a) To the extent applicable, each Loan Party is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) USA PATRIOT Act. To the knowledge of the Borrower, no part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(b) The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and Sanctions, and the Borrower, its Subsidiaries and their respective officers and employees.

(c) To the knowledge of the Borrower, its directors and agents are in compliance with Anti-Corruption Laws and Sanctions in all material respects.

(d) None of (i) the Borrower, any Subsidiary or any of their respective directors or officers, or (ii) to the knowledge of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person.

(e) No Borrowing, use of proceeds by the Borrower or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or Sanctions.

Section 3.22 EEA Financial Institution. No Loan Party is an EEA Financial Institution.

Section 3.23 Plan Assets. None of the Borrower or any of its Subsidiaries is an entity deemed to hold “plan assets” (within the meaning of the Plan Asset Regulations).

Section 3.24 Accounts. As of the Closing Date, all of each Loan Party’s Deposit Accounts, Securities Accounts and Commodities Accounts (other than Excluded Accounts) are listed on **Schedule 5.12**, including the name of the institution where such account is maintained, the account number and description of account.

Section 3.25 Approved Budget. [Reserved].

Section 3.26 Material Agreements. All Material Agreements to which any Loan Party or any Subsidiary is a party or is bound as of the date of this Agreement are listed on **Schedule 3.26**. Except for any defaults or events of default arising solely as a result of the commencement of the Chapter 11 Cases or prior to the commencement of the Chapter 11 Cases, no Loan Party nor any Subsidiary is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any Material Agreement to which it is a party or (ii) any agreement or instrument evidencing or governing any Material Indebtedness, in each case, as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 3.27 Chapter 11 Cases.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance with Applicable Law and proper notice thereof was given for (i) the motion seeking approval of the Loan Documents and the Final Order and (ii) the hearing for the entry of the Final Order.

(b) After the entry of the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against the Loan Parties now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims of the kind specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject to the priorities with respect to the ABL Obligations as further set forth in the Final Order, and/or Intercreditor Agreement, as applicable. In the event both the Administrative Agent and the ABL DIP Agent hold superpriority claims that are not satisfied from their respective collateral, such claims shall be pari passu and any proceeds received in respect of such claims shall be applied as provided in the Intercreditor Agreement.

(c) After the entry of the Final Order, the Obligations will be secured by a valid and perfected first priority Lien on all of the Collateral subject, as to priority, only to the extent set forth in the Final Order.

(d) The Final Order is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), vacated, or, without the Administrative Agent's consent, modified or amended. The Loan Parties are in compliance in all material respects with the Final Order.

ARTICLE IV

Conditions of Lending

The Administrative Agent and the Lenders shall not be required to fund any Loans on the Closing Date, until the following conditions are satisfied or waived:

Section 4.01 Closing Date. On the Closing Date:

(a) [Reserved].

(b) The representations and warranties set forth in **Article III** hereof shall be true and correct in all material respects as of such date, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(c) At the time of and immediately after giving effect to the Closing Date, no Event of Default or Default shall have occurred and be continuing.

(d) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include fax or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(e) [Reserved].

(f) The Administrative Agent shall have received in the case of each Loan Party each of the items referred to in **clauses (i), (ii), (iii) and (iv)** below:

(i) a copy of the certificate or articles of incorporation, certificate of limited partnership or certificate of formation, including all amendments thereto, of each Loan Party, certified as of a recent date by the Secretary of State (or other similar official) of the jurisdiction of its organization, and a certificate as to the good standing (to the extent such concept or a similar concept exists under the laws of such jurisdiction) of each such Loan Party as of a recent date from such Secretary of State (or other similar official);

(ii) a certificate of the secretary or assistant secretary or similar officer of each Loan Party dated the Closing Date and certifying:

(A) that attached thereto is a true and complete copy of the by-laws (or limited partnership agreement, limited liability company agreement or other equivalent governing documents) of such Loan Party as in effect on the Closing Date,

(B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or equivalent governing body) of such Loan Party (or its managing general partner or managing member) authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect on the Closing Date,

(C) that the certificate or articles of incorporation, certificate of limited partnership or certificate of formation of such Loan Party has not been amended since the date of the last amendment thereto disclosed pursuant to **clause (i)** above,

(D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party,

(E) as to the absence of any pending proceeding for the dissolution or liquidation of such Loan Party;

(iii) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary or similar officer executing the certificate pursuant to clause (ii) above; and

(iv) a certificate of a Responsible Officer of Holdings or the Borrower certifying that as of the Closing Date (x) all the representations and warranties described in Section 4.01(b) are true and correct to the extent set forth therein and (y) that as of the Closing Date, no Default or Event of Default has occurred and is continuing or would result from any Borrowing to occur on the date hereof or the application of the proceeds thereof.

(g) (i) the Administrative Agent shall have received the results of a search of the Uniform Commercial Code (or equivalent) filings made with respect to the Loan Parties and copies of the financing statements (or similar documents) disclosed by such search, (ii) the Administrative Agent shall have received evidence reasonably satisfactory to the Administrative Agent that the Liens indicated by such financing statements (or similar documents) are either permitted by Section 6.02 or have been released (or authorized for release in a manner reasonably satisfactory to the Administrative Agent); and (iii) each document required by the Security Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), shall be in proper form for filing, registration or recordation, except as set forth in Section 5.23.

(h) Financial Statements. The Lenders shall have received unaudited interim consolidated financial statements of Holdings and its Subsidiaries for the fiscal quarter ended December 31, 2019.

(i) Intercreditor Agreement. The Administrative Agent shall have entered into the Intercreditor Agreement with the ABL DIP Agent in form and substance satisfactory to the Administrative Agent and the ABL DIP Agent.

(j) The Administrative Agent shall have received all fees payable to any Lender on or prior to the Closing Date to the extent invoiced at least 3 Business Days prior to the Closing Date, all other amounts due and payable pursuant to the Loan Documents on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all reasonable and documented (in summary format) out-of-pocket expenses (including reasonable and documented fees, charges and disbursements of Willkie Farr & Gallagher LLP) required to be reimbursed or paid by the Loan Parties hereunder or under any other Loan Document.

(k) No Material Adverse Effect.

(i) Since the Petition Date, other than those events or circumstances arising from the commencement of the Chapter 11 Cases, there has been no event or circumstance, either individually or in the aggregate, that has or could reasonably be expected to have a Material

Adverse Effect.

(ii) Except for actions, suits, investigations, proceedings, claims or disputes stayed by Section 362 of the Bankruptcy Code, no orders, injunctions or pending litigation exists which could reasonably be expected to have a Material Adverse Effect or which challenges this Agreement, the Loan Documents or the credit facilities contemplated hereunder.

(iii) Since the Petition Date, there has been no material increase in the liabilities, liquidated or contingent, of the Borrower and the Subsidiary Guarantors taken as a whole, or material decrease in the assets of the Borrower, the Subsidiary Guarantors taken as a whole except as set forth in motions or orders filed in the bankruptcy.

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

(l) To the extent requested by the Administrative Agent not less than ten (10) days prior to the Closing Date, the Administrative Agent shall have received, at least five (5) days prior to the Closing Date, all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act and the Beneficial Ownership Regulation.

(m) [Reserved].

(n) The Administrative Agent (or its counsel) shall have received from each party thereto either (i) a counterpart of the Fee Letter signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include fax or other electronic transmission (including a “.pdf” electronic version) of a signed signature page of this Agreement) that such party has signed a counterpart of the Fee Letter.

(o) Security Interest. Subject to the Final Order, the Administrative Agent shall be satisfied that the Loan Documents and the Final Order shall be effective to create in favor of the Administrative Agent a legal, valid, first priority, perfected and enforceable security interest and Lien upon the Collateral, with the priority set forth in the Final Order and the terms thereof.

(p) [Reserved].

(q) Insolvency Matters – Chapter 11 Cases. The Court shall have entered an Final Order in form and substance satisfactory to the Administrative Agent.

(r) Real Estate Documents. With respect to each parcel of real property specified on Schedule 4.01(r) (each, individually, a “Mortgaged Property,” and, collectively, the “Mortgaged Properties”), the Administrative Agent shall have received the following, which in each case shall be in form and substance reasonably satisfactory to the Administrative Agent:

(i) to the extent in the Loan Parties' possession as of the date hereof, a survey with respect to such Mortgaged Property;

(ii) if any such parcel of such Mortgaged Property is determined by the Administrative Agent to be in a flood zone, a flood notification form signed by the Borrower and evidence that flood insurance is in place for the building and contents located at such Mortgaged Property; and

(iii) [Reserved].

(s) ABL DIP Facility. The ABL DIP Facility shall be in full force and effect and no "Default" or "Event of Default" (as defined in the ABL DIP Credit Agreement) shall have occurred and be continuing under the ABL DIP Credit Agreement that remains uncured or not expressly waived in writing by the ABL DIP Lenders.

(t) Title Reports. At least three (3) Business Days prior to the hearing on the proposed Final Order, the Administrative Agent shall have received title reports or other evidence reasonably satisfactory to Administrative Agent evidencing that title to each Mortgaged Property is vested in the Loan Parties subject only to liens and encumbrances satisfactory to the Administrative Agent in its sole discretion.

(u) Other Documents. The Administrative Agent shall have received such other customary documents as the Administrative Agent or its counsel may have reasonably requested prior to the Closing Date.

The Administrative Agent and each Lender, by delivering its signature page to this Agreement and funding a Loan on the Closing Date, shall be deemed to have acknowledged receipt of and consented to and approved each Loan Document and each other document required to be approved by the Administrative Agent or any Lender, as applicable, on the Closing Date.

Section 4.02 Conditions Precedent to Delayed Draw Term Loans. On the date of each Borrowing of Delayed Draw Term Loans:

(a) the Borrower shall have delivered to the Administrative Agent a customary Borrowing Request certifying as to, among other things, that the Loans will be utilized in accordance with Section 5.13;

(b) The Delayed Draw Term Loan Conditions shall have been satisfied;

(c) At the time of and immediately after giving effect to such Borrowing and the application of the proceeds thereof, no Default or Event of Default shall have occurred and be continuing (except for any defaults or events of default arising solely as a result of the commencement of the Chapter 11 Cases);

(d) the representations and warranties of each Loan Party set forth in Article III of this Agreement or in any other Loan Document shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) on the date of, and upon giving effect to, such funding or issuance (except for representations and warranties that expressly relate

to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as such earlier date); and

(e) The Borrower shall have paid the balance of all reasonable and documented fees and expenses then due and payable under this Agreement.

Each request by the Borrower for funding of a Delayed Draw Term Loan shall constitute a representation by the Borrower that the conditions in clauses (a) through (e) above are satisfied on the date of such request and on the date of such funding.

ARTICLE V

Affirmative Covenants

Each of Parent (solely as to Sections 5.01, 5.05 and 5.09 as applicable to it) and the Borrower covenants and agrees with each Lender that so long as any Commitments or Obligations (other than contingent obligations as to which no claim or demand for payment has been made, or in the case of indemnification obligations, no notice has been given) are outstanding, the Borrower (and Holdings solely to the extent applicable to it) will, and the Borrower will cause each of the Subsidiaries to:

Section 5.01 Existence; Conduct of Business.

(a) Use commercially reasonable efforts to do or cause to be done all things reasonably necessary to preserve, renew and keep in full force and effect its legal existence, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, and except to the extent the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the rights, qualifications, permits, franchises, governmental authorizations, Intellectual Property rights, Licenses and permits with respect to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted; provided that the foregoing provisions shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under Section 6.05.

(b) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, use commercially reasonable efforts to do or cause to be done all things necessary to (i) lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, patents, trademarks, service marks, trade names, copyrights, licenses and rights with respect thereto reasonably necessary to the normal conduct of the business of the Borrower and the Subsidiaries and (ii) at all times maintain and preserve all property reasonably necessary to the normal conduct of the business of the Borrower and the Subsidiaries and keep such property in satisfactory repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto in accordance with prudent industry practice (in each case except as expressly permitted by this Agreement).

Section 5.02 Insurance. Maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company insurance in such amounts (with no

greater risk retention) and against such risks (including, without limitation: loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations. In the event any Real Property constituting Collateral hereunder is located in any area that has been designated by the Federal Emergency Management Agency as a “Special Flood Hazard Area”, such Loan Party shall purchase and maintain flood insurance on such Real Property constituting Collateral hereunder (including any personal property which is located on such Real Property). The minimum amount of flood insurance required by this Section shall be in an amount equal to the total replacement cost value of the improvements. All insurance policies required hereunder which cover any Collateral shall name the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) as an additional insured or as lender loss payee, as applicable, and shall contain lender loss payable clauses or mortgagee clauses, through endorsements in form and substance satisfactory to the Administrative Agent, which provide that: (a) all proceeds thereunder with respect to any Collateral shall be payable to the Administrative Agent (provided that the Administrative Agent’s application of such proceeds shall be subject to the Intercreditor Agreement and the Final Order); (b) no such insurance shall be affected by any act or neglect of the insured or owner of the property described in such policy; and (c) such policy and lender loss payable or mortgagee clauses may be canceled, amended, or terminated only upon at least thirty (30) days (ten (10) days in the case of failure to pay premiums) prior written notice given to the Administrative Agent. All premiums on any such insurance shall be paid when due by such Loan Party, and copies of the policies delivered to the Administrative Agent upon Administrative Agent’s request therefor. If such Loan Party fails to obtain any insurance as required by this Section, the Administrative Agent may obtain such insurance at the Borrower’s expense. By purchasing such insurance, the Administrative Agent shall not be deemed to have waived any Default arising from the Loan Party’s failure to maintain such insurance or pay any premiums therefor. The Borrower will furnish to the Lenders, upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained.

Section 5.03 Taxes. Pay and discharge promptly when due all material Taxes, imposed upon it or upon its income or profits or in respect of its property, as well as all lawful claims which, if unpaid, might give rise to a Lien (other than a Lien permitted under **Section 6.02**) upon such properties or any part thereof except to the extent not overdue by more than thirty (30) days or, if more than thirty (30) days overdue (a) the validity or amount thereof shall be contested in good faith by appropriate proceedings, and the Borrower or the affected Subsidiary, as applicable, shall have set aside on its books reserves in accordance with GAAP with respect thereto and (b) in the case of a Tax or claim which has or may become a Lien on any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim.

Section 5.04 Financial Statements, Reports and Other Information. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders):

(a) as soon as available, but in any event in accordance with Applicable Law and not later than ninety (90) days after the end of each fiscal year (commencing with the fiscal year ending June 30, 2020), a consolidated balance sheet and related statements of operations, cash flows and owners’ equity showing the financial position of Holdings and its Subsidiaries as of the

close of such fiscal year and the consolidated results of its operations during such year and setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners' equity shall be accompanied by customary management's discussion and analysis and audited by independent public accountants of recognized national standing and accompanied by an opinion of such accountants (which opinion shall be without a "going concern" or like qualification, other than solely with respect to an upcoming maturity date of Indebtedness or a potential inability to satisfy a financial covenant, or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements fairly present, in all material respects, the financial condition and results of operations of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP, supporting schedules reconciling such consolidated balance sheet and related statements of operations and cash flows with the consolidated financial condition and results of operations of Holdings or the Borrower, as applicable, for the relevant period (it being understood that the delivery by the Borrower of annual reports on Form 10-K of Holdings and its consolidated Subsidiaries shall satisfy the requirements of this **Section 5.04(a)** to the extent such annual reports include the information specified herein);

(b) as soon as available, but in any event in accordance with Applicable Law and not later than forty-five (45) days after the end of each fiscal quarter (commencing with the fiscal quarter ending September 30, 2020), a consolidated balance sheet and related statements of operations and cash flows showing the financial position of Holdings and its Subsidiaries as of the close of such fiscal quarter and the consolidated results of its operations during such fiscal quarter and the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, all of which shall be in reasonable detail and which consolidated balance sheet and related statements of operations and cash flows shall be accompanied by customary management's discussion and analysis and certified by a Financial Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes), supporting schedules reconciling such consolidated balance sheet and related statements of operations and cash flows with the consolidated financial position and results of operations of Holdings or the Borrower, as applicable, for the relevant period (it being understood that the delivery by the Borrower of quarterly reports on Form 10-Q of Holdings and its consolidated Subsidiaries shall satisfy the requirements of this **Section 5.04(b)** to the extent such quarterly reports include the information specified herein);

(c) within thirty (30) days after the end of each month (for each of the first two (2) months of each fiscal quarter), a balance sheet and related statements of operations and cash flows showing the financial position of Holdings and its Subsidiaries as of the close of such month and the consolidated results of its operations during such month, all of which shall be in reasonable detail;

(d) concurrently with any delivery of financial statements under **paragraphs (a)** or **(b)** above, a Compliance Certificate certifying that no Default or Event of Default has occurred or, if such a Default or an Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;

(e) except to the extent otherwise specified, by Thursday of every calendar week prepared as of the close of business on Saturday of the previous week, delivered electronically in a text formatted file similar to the file provided under the ABL DIP Credit Agreement, a reconciliation of the loan balance per the Borrower's general ledger to the loan balance under this Agreement;

(f) [reserved];

(g) promptly upon the Administrative Agent's reasonable request, information relating to the Collateral to the extent available using commercially reasonable efforts;

(h) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials filed by Holdings, the Borrower or any of its Subsidiaries with the SEC or any securities exchange, or distributed to its stockholders generally, as applicable and all press releases and other statements made available generally by Holdings or any of its Subsidiaries to the public concerning material developments in the business of Holdings or any of its Subsidiaries;

(i) [Reserved];

(j) promptly following a request therefor, (x) such other information regarding compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request, and (y) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation;

(k) promptly upon any extension thereof, notice from the ABL DIP Agent that it has agreed to extend a Case Milestone;

(l) promptly following reasonable request therefore from the Administrative Agent, copies of (i) any documents described in Sections 101(f) and/or (j) of ERISA with respect to any Plan, and/or (ii) any notices or documents described in Sections 101(f), (k) and/or (l) of ERISA requested with respect to any Multiemployer Plan; provided, that if any Loan Party or any ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Plan or Multiemployer Plan, then, upon reasonable request of the Administrative Agent, the Loan Party(ies) and/or the ERISA Affiliate(s) shall promptly make a request for such documents or notices from such administrator or sponsor and the Borrower shall provide copies of such documents and notices to the Administrative Agent promptly after receipt thereof;

(m) promptly, from time to time, such other information regarding compliance with the terms of any Loan Document, as in each case the Administrative Agent may reasonably request (for itself or on behalf of any Lender); and

(n) documents required to be delivered pursuant to this **Section 5.04** may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings or the Borrower (or a representative thereof) posts such documents (or

provides a link thereto) at www.tuesdaymorning.com; provided that, other than with respect to items required to be delivered pursuant to **Section 5.04(e)** above, Holdings or the Borrower shall promptly notify (which notice may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents at www.tuesdaymorning.com and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents; (ii) on which such documents are delivered by Holdings or the Borrower to the Administrative Agent for posting on behalf of Holdings and the Borrower on IntraLinks, SyndTrak or another relevant secure website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); (iii) on which such documents are faxed to the Administrative Agent (or electronically mailed to an address provided by the Administrative Agent); or (iv) with respect to any item required to be delivered pursuant to **Section 5.04(e)** above in respect of information filed by Holdings or its applicable Parent Entity with any securities exchange or with the SEC or any analogous Governmental Authority or private regulatory authority with jurisdiction over matters relating to securities (other than Form 10-Q reports and Form 10-K reports), on which such items have been made available on the SEC website or the website of the relevant analogous governmental or private regulatory authority.

Section 5.05 Notices of Material Events. Furnish to the Administrative Agent (and the Administrative Agent shall make available to each Lender) promptly after any a Responsible Officer obtains knowledge (but in any event within any time period that may be specified below) written notice of the following:

- (a) the occurrence of any Default, Event of Default, or any “Default” or “Event of Default” as defined in the ABL DIP Credit Agreement;
- (b) any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against Holdings, the Borrower or any of their Subsidiaries would reasonably be expected to have a Material Adverse Effect;
- (c) the occurrence of any ERISA Event or Foreign Plan Event that, individually or together with all other ERISA Events or Foreign Plan Events that have occurred, would reasonably be expected to have a Material Adverse Effect;
- (d) the filing of any Lien for unpaid taxes in excess of \$1,000,000;
- (e) any change in the Borrower’s chief executive officer or chief financial officer;
- (f) any discharge, resignation or withdrawal of the registered public accounting firm (provided that filing an applicable 8-K with the SEC shall satisfy any notice requirements under **clause (e)** above or this **clause (f)**);
- (g) any Casualty Event or the commencement of any action or proceeding that could reasonably be expected to result in a Casualty Event,
- (h) if a Beneficial Ownership Certification has been delivered, any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that

would result in a change to the list of beneficial owners identified in such certification;

(i) [reserved]; and

(j) any other development specific to Holdings, the Borrower or any of their Subsidiaries that is not a matter of general public knowledge and that has had, or would reasonably be expected to have, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the material details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 5.06 Compliance with Laws. (a) Comply with (x) each Applicable Law applicable to it or its property (including without limitation Environmental Laws), except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect or such compliance is stayed by the Chapter 11 Cases and (y) the Bankruptcy Code, the Bankruptcy Rules, the Final Order, and any other order of the Court in all material respects, and (z) subject to the foregoing clause (a)(y), perform in all material respects its obligations under Material Agreements to which it is a party; provided that this **Section 5.06** shall not apply to Environmental Laws, which are the subject of **Section 5.08**, or to laws related to Taxes, which are the subject of **Section 5.03** and (b) maintain in effect and enforce such policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 5.07 Maintaining Records; Access to Properties and Inspections.

(a) Maintain all financial records in a manner sufficient to permit the preparation of consolidated financial statements in accordance with GAAP.

(b) Permit the Administrative Agent, subject (except when an Event of Default exists) to reasonable advance notice to, and reasonable coordination with, the Borrower and normal business hours, to visit and inspect the Collateral; provided that the Administrative Agent shall only be permitted to conduct one appraisal with respect to each Mortgaged Property; provided further, if an Event of Default has occurred and is continuing, there shall be no limit on the number of additional appraisals. No such inspection or visit shall unduly interfere with the business or operations of the Borrower, nor result in any damage to the Property or other Collateral. Neither the Administrative Agent nor any Lender shall have any duty to the Borrower to make any inspection. The Borrower acknowledges that all inspections, appraisals and reports are prepared by the Administrative Agent and Lenders for their purposes, and the Borrower shall not be entitled to rely upon them.

(c) Reimburse the Administrative Agent for all reasonable and documented out-of-pocket (in summary format) reasonable and necessary costs and expenses (other than legal fees or costs and expenses which are covered under **Section 9.05**) of the Administrative Agent in connection with (i) examinations of the Borrower's books and records or any other financial or Collateral matters as the Administrative Agent deems appropriate; and (ii) appraisals permitted hereunder; in each case subject to the limitations set forth under the preceding paragraph. Subject

to and without limiting the foregoing, the Borrower specifically agrees to pay the Administrative Agent's then standard charges for appraisal activities, including the standard charges of the Administrative Agent's internal appraisal group. This Section shall not be construed to limit the Administrative Agent's right to use third parties for such purposes.

Section 5.08 Compliance with Environmental Laws.

(a) Comply, and make reasonable efforts to cause all lessees and other Persons occupying its properties to comply, with all Environmental Laws applicable to its operations and properties; and obtain and renew all authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws. This **clause (a)** shall be deemed not breached by a noncompliance with the foregoing if, upon learning of such noncompliance, the Borrower and any of its affected Subsidiaries promptly undertake reasonable efforts to eliminate such noncompliance, and such noncompliance and the elimination thereof, in the aggregate with any other noncompliance with any of the foregoing and the elimination thereof, could not reasonably be expected to have a Material Adverse Effect.

(b) Except as could not reasonably be expected to have a Material Adverse Effect, generate, use, treat, store, release, dispose of, and otherwise manage Hazardous Materials in a manner that would not reasonably be expected to result in a material liability to the Borrower or any of the Subsidiaries or to materially affect any Real Property; and take reasonable efforts to prevent any other Person from generating, using, treating, storing, releasing, disposing of, or otherwise managing Hazardous Materials in a manner that could reasonably be expected to result in a material liability to, or materially affect any Real Property.

Section 5.09 Further Assurances; Mortgages.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, Mortgages and other documents and recordings of Liens in stock registries), that may be required under any Applicable Law, or that the Administrative Agent may reasonably request, which may be required by any Applicable Law or which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Security Documents, all in form and substance reasonably satisfactory to the Administrative Agent and all at the expense of the Loan Parties.

(b) [Reserved].

(c) Subject to Applicable Law, cause each of its Subsidiaries formed or acquired after the date of this Agreement, provided that prior to any such formation or acquisition, such Loan Party shall have received the written consent of the Administrative Agent to such formation or acquisition, to become a Loan Party, in each case, by executing a Joinder Agreement. Upon execution and delivery thereof, each such Person (A) shall automatically become a Guarantor as provided in Article XI hereunder, and thereupon shall have all of the rights, benefits, duties and obligations in such capacity under the Loan Documents and (B) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties,

in any property of such Loan Party which constitutes Collateral (in each case to the extent required of any Loan Party pursuant to the Loan Documents to which such Loan Party is a party).

(d) (i) Furnish to the Administrative Agent promptly (and in any event within five (5) days) written notice of any change in (A) any Loan Party's corporate or organization name, (B) any Loan Party's organizational form or (C) any Loan Party's organizational identification number; provided that neither Holdings nor the Borrower shall effect or permit any such change unless all filings have been made, or will have been made within any applicable statutory period, under the UCC or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral to for the benefit of the Secured Parties and (ii) promptly notify (and in any event within five (5) days) the Administrative Agent if any material portion of the Collateral is damaged or destroyed.

Section 5.10 Fiscal Year; Accounting. In the case of Holdings and the Borrower, (i) cause its fiscal year to end on June 30 and (ii) prohibit any change to the accounting policies or reporting practices of the Loan Parties, except in accordance with GAAP.

Section 5.11 [Reserved].

Section 5.12 Collateral Monitoring and Reporting. The Borrower shall deliver to the Administrative Agent (and the Administrative Agent shall promptly deliver same to the Lenders) copies of all borrowing base certificates (and all back-up information) delivered to the ABL DIP Agent.

Section 5.13 Use of Proceeds. The proceeds of the Loans will only be used by the Borrower, in each case, strictly in accordance with the Approved Budget (subject to Permitted Variances, as defined in the ABL DIP Credit Agreement): (a) to repay the ABL Obligations; (b) to fund general working capital requirements of the Loan Parties and (c) for payment of all reasonably documented (in summary format) accrued and unpaid reasonable transaction costs, fees and expenses with respect to this Agreement, including reasonable fees and expenses of professional advisors to the Lenders and the Administrative Agent, in each case, to the extent permitted under the Final Order and the ABL DIP Credit Agreement (and the Orders as defined in the ABL DIP Credit Agreement).

Section 5.14 Approved Budget.

(a) The use of Loans and other extensions of credit by the Loan Parties under this Agreement and the other Loan Documents shall be limited in accordance with the Approved Budget (subject to variances permitted under this Section 5.14) and the terms hereof. The initial Approved Budget shall depict, on a weekly basis, cash receipts, expenses, and disbursements, net cash flows, inventory receipts, sales and costs of sales at stores being closed and proposed to be closed, Total Cash Receipts, Total Operating Disbursements, Total Non-Operating Disbursements, Professional Fees, the projected Borrowing Base, Availability and the other items set forth therein, for the first thirteen (13) week period from the Closing Date.

(b) [Reserved].

(c) Administrative Agent and the Lenders (i) may assume that the Loan Parties will comply with the Approved Budget, (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to any Approved Budget. The line items in the Approved Budget for payment of interest, expenses and other amounts to the Administrative Agent and the Lenders are estimates only, and the Loan Parties remain obligated to pay any and all Obligations in accordance with the terms of the Loan Documents and the Final Order regardless of whether such amounts exceed such estimates. Nothing in any Approved Budget shall constitute an amendment or other modification of any Loan Document or other lending limits set forth therein.

Section 5.15 [Reserved].

Section 5.16 Material Agreements. The Borrower shall, and shall cause its Subsidiaries, subject to the Bankruptcy Code and applicable orders of the Court, (a) to, perform and observe in all material respects all the terms and provisions of each Material Agreement to be performed or observed by it; and (b) to use commercially reasonable efforts to maintain each such Material Agreement in full force and effect, enforce each such Material Agreement in accordance with its terms.

Section 5.17 Status Calls. On each Friday after the Closing Date, cause the Borrower Sale Advisor, the Borrower Financial Advisor and each of their respective representatives to be available for conference calls during normal business hours ("Status Calls") for the purpose of providing the Administrative Agent and the advisors assisting the Administrative Agent with an update on the status and progress of any restructuring and/or sale diligence, negotiations and documentation, accompanied, in each case, by a written summary of such update which may, in the Administrative Agent's sole discretion, be provided to the Lenders. In addition to the foregoing, the Loan Parties agree that Status Calls shall be conducted (i) promptly following a request by the Administrative Agent and (ii) at least once per week. Notwithstanding anything to the contrary contained in this Section 5.17, none of the Loan Parties will be required to disclose or permit access to any document, information or other matter (i) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Applicable Law or any binding agreement or (ii) that is subject to attorney client or similar privilege or constitutes attorney work product.

Section 5.18 Administrative Agent Professionals. The Administrative Agent, on behalf of itself and the Lenders, shall be entitled to retain any Agent Professional to provide advice, analysis and reporting for the benefit of the Administrative Agent and the Lenders concerning this Agreement. The Loan Parties shall pay all reasonably documented reasonable fees and expenses of each Agent Professional and all such fees and expenses shall constitute Obligations and be secured by the Collateral. The Loan Parties and their advisors (including the Borrower Financial Advisor and the Borrower Sale Advisor) shall grant access to, and make commercially reasonable efforts to cooperate in all respects with, the Administrative Agent, the Lenders, the Agent Professionals, and any other representatives of the foregoing and provide all information that such parties may request in a timely manner relating to this Agreement.

Section 5.19 [Reserved].

Section 5.20 Debtor-In-Possession Obligations. Comply in a timely manner with its obligations and responsibilities as a debtor-in-possession under the Bankruptcy Code, the Bankruptcy Rules, and any other order of the Court.

Section 5.21 Payment of Obligations. Subject to the Final Order and the terms thereof, pay or discharge all Material Indebtedness and all other material liabilities and obligations, including Taxes, incurred after the Petition Date (but for the avoidance of doubt, Taxes incurred before the Petition Date which are required to be paid in accordance with the Final Order or any other order of the Court shall be permitted to be paid), before the same shall become delinquent or in default (after giving effect to any applicable cure periods), but subject to the Approved Budget (and the Permitted Variances (as defined in the ABL DIP Credit Agreement) thereunder), except where either (a)(i) the validity or amount thereof is being contested in good faith by appropriate proceedings, and (ii) such Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, or (b) such liabilities would not result in aggregate liabilities in excess of \$1,000,000 and none of the Collateral would become subject to forfeiture or loss as a result of the contest; provided, however, that each Loan Party will, and will cause each Subsidiary to, remit withholding taxes and other payroll taxes to appropriate Governmental Authorities as and when claimed to be due, notwithstanding the foregoing exceptions.

Section 5.22 [Reserved].

Section 5.23 Post-Closing Obligations. Complete each of the items and take each of the actions set forth on Schedule 5.23 hereto by the deadline indicated thereon (as such deadlines may be extended in the sole discretion of the Administrative Agent).

ARTICLE VI

Negative Covenants

Each of Holdings (solely as to **Section 6.08(a)**) and the other Loan Parties covenants and agrees with each Lender that, so long as any Commitments or Obligations (other than contingent obligations as to which no claim or demand for payment has been made, or, in the case of indemnification obligations, no notice has been given) are outstanding, the Loan Parties will not and will not permit any of its Subsidiaries to (and Holdings as to **Section 6.08(a)**, will not):

Section 6.01 Indebtedness. Incur, create, assume or permit to exist any Indebtedness, except:

(a) the Obligations and Indebtedness of any Loan Party under the Loan Documents;

(b) [reserved];

(c) Indebtedness owed to (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) any Person providing workers' compensation, securing unemployment insurance and other social security laws or regulation, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other similar obligations to the Borrower or any Subsidiary Guarantor;

(d) Indebtedness of the Borrower to any Subsidiary Guarantor and of any Subsidiary Guarantor to the Borrower or any other Subsidiary Guarantor;

(e) Indebtedness in respect of bids, trade contracts (other than for debt for borrowed money), leases (other than Capital Lease Obligations), statutory obligations, surety, stay, customs and appeal bonds, performance, performance and completion and return of money bonds, government contracts, financial assurances and completion guarantees and similar obligations, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business (including Indebtedness in respect of letters of credit, bank guarantees or similar instruments in lieu of such items to support the issuance thereof);

(f) Indebtedness in respect of netting services, overdraft protection and similar arrangements, in each case, in connection with cash management and deposit accounts;

(g) Capital Lease Obligations and purchase money Indebtedness (including any industrial revenue bond, industrial development bond and similar financings) incurred by the Borrower or any Subsidiary Guarantor prior to or within two hundred seventy (270) days after the acquisition, lease, repair or improvement of the respective asset in order to finance such acquisition, lease, repair or improvement, and any Permitted Refinancing Indebtedness in respect thereof, in an aggregate outstanding principal amount that at the time of, and after giving effect to, the incurrence thereof would not exceed \$15 million for the Test Period most recently ended on or prior to the date of determination for which financial statements are available;

(h) the ABL Obligations; provided, however, with respect to the principal amount of any loans incurred under the ABL DIP Credit Agreement and Pre-Petition ABL Credit Agreement, the principal amount thereof shall not exceed \$110,000,000.00;

(i) Guarantees (i) by the Loan Parties of the Indebtedness described in **Section 6.01(h)**, or (ii) by the Borrower or any Loan Party of any Indebtedness of any other Loan Party permitted to be incurred under this Agreement; provided that no Guarantee by Holdings or any of its Subsidiaries of Indebtedness described in **Section 6.01(h)** shall be permitted unless Holdings or the applicable Subsidiaries, as the case may be, shall have also provided a Guarantee of the Obligations under the Loan Documents on substantially the terms set forth in the applicable Guarantee of such Indebtedness or on terms acceptable to the Administrative Agent (provided, however, it being understood and agreed that the Guarantees hereunder shall only be secured by the Collateral);

(j) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business, in each case, in accordance with the Approved Budget;

(k) Indebtedness existing on the Closing Date and set forth on **Schedule 6.01** and any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness;

(l) Indebtedness supported by a Letter of Credit issued under (and as defined in) the ABL DIP Credit Agreement, in a principal amount not in excess of the stated amount of such Letter of Credit;

(m) Indebtedness incurred by the Borrower and any Subsidiary Guarantor representing deferred compensation to directors, officers, employees, members of management and consultants of Holdings, any Parent Entity, the Borrower or any Subsidiary Guarantor in the ordinary course of business, in each case, in accordance with the Approved Budget;

(n) Indebtedness in respect of (x) letters of credit, bankers' acceptances supporting trade payables, warehouse receipts or similar facilities entered into in the ordinary course of business or (y) any Letter of Credit issued under (and as defined in) the ABL DIP Credit Agreement in favor of any issuing bank under the ABL DIP Credit Agreement to support any Defaulting Lender's (as defined in the ABL DIP Credit Agreement) participation in Letters of Credit issued under and as defined in the ABL DIP Credit Agreement;

(o) Indebtedness arising out of the creation of any Lien (other than for Liens securing debt for borrowed money) permitted under **Section 6.02**;

(p) Indebtedness incurred in the ordinary course of business in respect of obligations of the Borrower or any Subsidiary Guarantor to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services;

(q) unfunded pension fund and other employee benefit plan obligations and liabilities incurred in the ordinary course of business to the extent that they are permitted to remain unfunded under Applicable Law;

(r) all premium (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on Indebtedness described in **paragraphs (a) through (q)** above.

Notwithstanding any of the foregoing, other than the Indebtedness contemplated by **Section 6.01(h)** and as set forth in the Final Order, no Indebtedness permitted under this **Section 6.01** shall be permitted to have an administrative expense claim status under the Bankruptcy Code senior to or pari passu with the superpriority administrative expense claims of the Administrative Agent and the Lenders.

Section 6.02 Liens. Create, incur, assume or permit to exist any Lien on any property or assets (including Equity Interests, evidences of Indebtedness or other securities of any Person) at the time owned by it or on any income or revenues or rights in respect of any thereof, except:

(a) Liens on property or assets of the Borrower and any Subsidiary Guarantor existing on the Closing Date and set forth on **Schedule 6.02** and any refinancing, modification, replacement, renewal or extension thereof; provided, that the Lien does not extend to any additional property other than after-acquired property that is affixed to or incorporated in the property covered by such Lien and the proceeds and products thereof;

(b) any Lien created under the Loan Documents;

(c) Liens for Taxes, assessments or other governmental charges or levies which are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, which are being contested in accordance with **Section 5.03**;

(d) landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, (i) which are being contested in accordance with **Section 5.03** or (ii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(e) (i) subject to the Final Order, pledges and deposits made (including to support obligations in respect of letters of credit, bank guarantees or similar instruments to secure) in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers' compensation, unemployment insurance and other social security laws or regulations and deposits securing premiums or liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations or otherwise as permitted in **Section 6.01(c)** and (ii) pledges and deposits securing liability for reimbursement or indemnification obligations of (including to support obligations in respect of letters of credit, bank guarantees or similar instruments for the benefit of) insurance carriers in respect of property, casualty or liability insurance to the Borrower or any Subsidiary provided by such insurance carriers;

(f) (i) deposits to secure the performance of bids, trade contracts (other than for debt for borrowed money), leases (other than Capital Lease Obligations), statutory obligations, surety, stay, customs and appeal bonds, performance, performance and completion and return of money bonds, government contracts, financial assurances and completion and similar obligations and similar obligations, including those incurred to secure health, safety and environmental obligations in the ordinary course of business and (ii) obligations in respect of letters of credit or bank guarantees that have been posted to support payment of the items set forth in **clause (i)** of this **Section 6.02(f)**;

(g) zoning restrictions, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights-of-way, restrictions on use of Real Property and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Borrower or any Subsidiary;

(h) Liens securing Capital Lease Obligations, and purchase money Indebtedness or improvements thereto hereafter acquired, leased, repaired or improved by the Borrower or any Subsidiary Guarantor (including the interests of vendors and lessors under conditional sale and title retention agreements); provided that (i) such security interests secure Indebtedness permitted by **Section 6.01(g)** (including any Permitted Refinancing Indebtedness in respect thereof), (ii) such security interests are created, and the Indebtedness secured thereby is incurred, within two hundred seventy (270) days after such acquisition, lease, completion of construction or repair or improvement (except in the case of any Permitted Refinancing Indebtedness), (iii) the Indebtedness secured thereby does not exceed the cost of such equipment or other property or improvements at the time of such acquisition or construction, including transaction costs (including any fees, costs or expenses or prepaid interest or similar items) incurred by the Borrower or any Subsidiary Guarantor in connection with such acquisition or construction or material repair or improvement or financing thereof and (iv) such security interests

do not apply to any other property or assets of the Borrower or any Subsidiary Guarantor (other than to the proceeds and products of and the accessions to such equipment or other property or improvements but not to other parts of the property to which any such improvements are made); provided, that individual financings otherwise permitted to be secured hereunder provided by one Person (or its affiliates) may be cross collateralized to other such financings provided by such Person (or its affiliates);

(i) Liens securing judgments that do not constitute an Event of Default under **Section 7.01(j)**;

(j) any interest or title of a lessor, sublessor, licensor or sublicensee under any leases, subleases, licenses or sublicenses entered into by the Borrower or any Subsidiary in the ordinary course of business;

(k) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any Subsidiary Guarantor to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary Guarantor, (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary Guarantor in the ordinary course of business, (iv) attaching to commodity trading or other brokerage accounts incurred in the ordinary course of business and (v) encumbering reasonable customary initial deposits and margin deposits;

(l) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights as to Deposit Accounts, Securities Accounts, or Commodities Accounts or other funds or investments maintained with depository institutions or securities intermediaries arising in the ordinary course of business;

(m) (i) leases, subleases, licenses or sublicenses of property in the ordinary course of business or (ii) rights reserved to or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any Subsidiary Guarantor or by a statutory provision to terminate any such lease, license, franchise, grant or permit or to require periodic payments as a condition to the continuance thereof;

(n) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(o) Liens consisting of an agreement to dispose of any property in a transaction permitted under **Section 6.05**;

(p) Liens arising from precautionary UCC financing statements (or similar filings under other Applicable Law) regarding operating leases or consignment or bailee arrangements;

(q) Liens securing Indebtedness permitted under **Section 6.01(h)** (including any adequate protection liens and adequate protection superpriority claims); provided that any such Liens are subject to the Intercreditor Agreement;

(r) [reserved];

(s) Liens (i) arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any Subsidiary Guarantor in the ordinary course of business and (ii) arising by operation of law under Article 2 of the UCC;

(t) Liens on cash or deposits granted in favor of any issuing bank under the ABL DIP Credit Agreement to support any Defaulting Lender's (as defined in the ABL DIP Credit Agreement) participation in Letters of Credit issued under and as defined in the ABL DIP Credit Agreement;

(u) Liens on insurance policies and the proceeds thereof securing the financing of Indebtedness permitted pursuant to **Section 6.01(j)(i)**;

(v) [reserved];

(w) [reserved];

(x) Liens, encumbrances and other matters disclosed as exceptions in Schedule B, or insured over by, title insurance policies; and

(y) Other title and survey exceptions as Administrative Agent has approved or may approve in writing in Administrative Agent's reasonable discretion which encumbrances in the aggregate do not materially and adversely affect the value or use of the property.

Notwithstanding the foregoing, (i) Liens on any Collateral permitted under this **Section 6.02** shall at all times be junior and subordinate to the Liens under the Loan Documents and the Final Order securing the Obligations. The prohibition provided for in this **Section 6.02** specifically includes any effort by any Loan Party, any official committee in any Chapter 11 Case or any other party in interest in the Chapter 11 Cases, as applicable, to prime or create pari passu to any claims, Liens or interests of the Administrative Agent and the Lenders except as provided in the Final Order or the Intercreditor Agreement.

Section 6.03 **[Reserved]**.

Section 6.04 **Investments, Loans and Advances**. Purchase, hold or acquire any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, another Person or make any Acquisition (each, an "**Investment**"), except:

(a) the Transactions;

(b) Investments among the Borrower and Subsidiary Guarantors in accordance with the Approved Budget; provided, that, in each case, if any such Investment is in the form of Indebtedness of a Loan Party, such Investment shall be subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent;

(c) Permitted Investments;

(d) Investments arising out of the receipt by the Borrower or any Subsidiary of promissory notes and other non-cash consideration for Dispositions permitted under **Section 6.05**;

(e) accounts receivable, notes receivable, security deposits and prepayments arising and trade credit granted in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers made in the ordinary course of business;

(f) Investments in existence on the date hereof and described in Schedule 6.04;

(g) Investments resulting from pledges and deposits permitted by **Section 6.02(b), (e), (f) and (t)**;

(h) Guarantees (i) permitted by **Sections 6.01(i)** and (ii) of leases (other than Capital Lease Obligations) or of other obligations not constituting Indebtedness, in each case in the ordinary course of business;

(i) Investments received in connection with the bankruptcy or reorganization of any Person, or settlement of obligations of, or other disputes with or judgments against, or foreclosure or deed in lieu of foreclosure with respect to any Lien held as security for an obligation, in each case in the ordinary course of business;

(j) Investments consisting of Liens permitted under **Section 6.02**;

(k) Investments in the ordinary course of business consisting of (i) endorsements for collection or deposit or (ii) customary trade arrangements with customers, in accordance with the Approved Budget; or

(l) Investments made in the ordinary course of business in connection with obtaining, maintaining or renewing client and customer contracts and loans or advances made to, and guarantees with respect to obligations of, distributors, suppliers, licensors and licensees in the ordinary course of business, in each case, in accordance with the Approved Budget.

Notwithstanding the foregoing, the Loan Parties shall not make any Investments of Collateral without the prior written consent of the Administrative Agent.

Section 6.05 Mergers, Consolidations and Dispositions. Merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or Dispose of (in one (1) transaction or in a series of related transactions) all or any part of its assets (whether now owned or hereafter acquired), or Dispose of any Equity Interests of any Subsidiary of the Borrower (including pursuant to any Division), except that this **Section 6.05** shall not prohibit:

(a) (i) the Disposition of inventory and equipment in the ordinary course of business by the Borrower or any Subsidiary, (ii) the Disposition of surplus, obsolete, used or worn out property (other than the Collateral), whether now owned or hereafter acquired, in the ordinary course of business by the Borrower or any Subsidiary, (iii) [reserved] or (iv) Dispositions of cash and Permitted Investments, in each case in the ordinary course of business and in accordance with the Approved Budget;

(b) if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing, (i) the merger of any Subsidiary of Holdings (which shall either be (A) newly formed expressly for the purpose of such transaction and which owns no assets, (B) Intermediate Holdings or (C) a Subsidiary of the Borrower) into the Borrower in a transaction in which the Borrower is the surviving or resulting entity or the surviving or resulting Person expressly assumes the obligations of the Borrower in a manner reasonably satisfactory to the Administrative Agent (for the avoidance of doubt, the Borrower shall not be permitted to consummate a Division), (ii) the merger or consolidation of any Subsidiary with or into any other Subsidiary; provided that in any such merger or consolidation involving any Subsidiary Guarantor, a Subsidiary Guarantor shall be the surviving or resulting Person or such transaction shall be an Investment permitted by **Section 6.04**, (iii) the liquidation or dissolution of any Subsidiary (other than the Borrower) or change in form of entity of any Subsidiary if the Borrower determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Borrower and is not disadvantageous to the Lenders, or (iv) the merger of Parent and Intermediate Holdings (or the dissolution or consolidation of Intermediate Holdings);

(c) the Specified Store Closing Sales;

(d) Dispositions of receivables in the ordinary course of business (i) not as part of an accounts receivables financing transaction or (ii) in connection with the collection, settlement or compromise thereof in a bankruptcy or similar proceeding;

(e) licensing and cross-licensing arrangements involving any technology or other Intellectual Property of the Borrower or any Subsidiary Guarantor in the ordinary course of business;

(f) the issuance of Qualified Capital Stock by the Borrower to Intermediate Holdings;

(g) sales of Equity Interests of any Subsidiary of the Borrower; provided that the purchaser shall be the Borrower or another Subsidiary Guarantor;

(h) Dispositions of property subject to casualty or condemnation proceeding (including in lieu thereof) upon receipt of the Net Proceeds therefor;

(i) Dispositions of Intellectual Property in the ordinary course of business consisting of the abandonment of Intellectual Property rights which, in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and the Subsidiaries;

(j) [reserved];

(k) the expiration of any option agreement in respect of personal property;

(l) any Subsidiary of the Borrower may consummate a merger, dissolution, liquidation or consolidation, the purpose of which is to effect a Disposition otherwise permitted under this **Section 6.05**; or

(m) Dispositions (other than Dispositions of Collateral) in connection with the outsourcing of services in the ordinary course of business.

Section 6.06 Dividends and Distributions. Declare or pay, directly or indirectly, any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof (other than Collateral), with respect to any Equity Interests of the Borrower (other than dividends and distributions on such Equity Interests payable solely by the issuance of additional Equity Interests of the Borrower) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any Equity Interests of the Borrower or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests of the Person redeeming, purchasing, retiring or acquiring such shares) (a “**Restricted Payment**”); provided, however, that the Borrower may make Restricted Payments as shall be necessary to allow Holdings (or any Parent Entity) (i) to pay operating expenses in the ordinary course of business and other corporate overhead, legal, accounting and other professional fees and expenses (including, without limitation, those owing to third parties plus any customary indemnification claims made by directors, officers, employees, members of management and consultants of Holdings (or any Parent Entity) attributable to the ownership or operations of Holdings, the Borrower and the Subsidiaries), and (ii) to pay franchise or similar taxes and other fees and expenses required in connection with the maintenance of its existence and its ownership of the Borrower and in order to permit Holdings to make payments (other than cash interest payments) which would otherwise be permitted to be paid by the Borrower under **Section 6.07(b)**, in each case, in accordance with the Approved Budget.

Section 6.07 Transactions with Affiliates. No Loan Party will, nor will it permit any Subsidiary to enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Loan Parties or such Subsidiary as would be obtainable by the Loan Parties or such Subsidiary at the time in a comparable arm’s length transaction with a Person other than an Affiliate, provided that the foregoing restriction shall not apply to (a) a transaction between or among any Loan Parties, (b) a transaction between or among any Subsidiaries that are not Loan Parties, (c) Investments permitted under **Section 6.04**, (d) transactions, arrangements, reimbursements and indemnities permitted between or among such parties under this Agreement, (e) the payment of reasonable fees and costs to directors, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers and employees of the Loan Parties or any of their Subsidiaries in accordance with the Approved Budget, (f) the Borrower and its Subsidiaries may provide cash management and corporate overhead services to the Subsidiaries of the Borrower, or (g) those transactions existing as of the date hereof and set forth on Schedule 6.07.

Section 6.08 Business of Holdings, the Borrower and the Subsidiaries. Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than:

(a) in the case of Holdings, (i) ownership and acquisition of Equity Interests in Intermediate Holdings or the Borrower, as applicable, together with activities directly related thereto, (ii) performance of its obligations under and in connection with the Loan Documents and the other agreements contemplated hereby and thereby, (iii) actions incidental to the consummation of the Transactions (including the payment of Transaction Costs), (iv) the

incurrence of and performance of its obligations related to Indebtedness and Guarantees incurred by Holdings after the Closing Date and that are related to the other activities referred to in, or otherwise permitted by, this **Section 6.08(a)**, (v) actions required by law to maintain its existence, (vi) the payment of taxes and other customary obligations, (vii) the issuance of Equity Interests, (viii) any transaction permitted in this **Article VI** (including guaranteeing Indebtedness or obligations of the Borrower and its Subsidiaries), (ix) performance of its obligations under and in connection with the ABL DIP Credit Agreement and Pre-Petition ABL Credit Agreement and the other agreements contemplated thereby and (x) activities incidental to its maintenance and continuance and to the foregoing activities, or

(b) in the case of the Borrower and any Subsidiary, any business or business activity conducted by any of them on the Closing Date and any business or business activities incidental or related thereto, or any business or activity that is reasonably similar thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

Notwithstanding anything to the contrary contained in herein, Holdings shall not sell, dispose of, grant a Lien on or otherwise transfer its Equity Interests in Intermediate Holdings or the Borrower, as applicable (other than (i) Liens created by the Security Documents, or (ii) Liens arising by operation of law that would be permitted under **Section 6.02**).

Section 6.09 Limitation on Modification of Indebtedness; Modification of Certificate of Incorporation, By-Laws and Certain Other Agreements; etc.

(a) Amend or modify in any manner materially adverse to the Lenders, or grant any waiver or release under or terminate in any manner (if such granting or termination shall be materially adverse to the Lenders), the articles or certificate of incorporation or by-laws or limited liability company operating agreement of Holdings, the Borrower or any of the Subsidiary Guarantors (provided that immaterial amendments of an administrative, mechanical, ministerial or technical nature may be made so long as contemporaneous notice thereof is given to the Administrative Agent), other than with the prior written consent of the Administrative Agent; or

(b) Permit the Borrower or any Subsidiary to enter into any agreement or instrument that by its terms restricts (i) the payment of dividends or distributions or the making of cash advances to (or the repayment of cash advances from) the Borrower or any Subsidiary or (ii) the granting of Liens on Collateral pursuant to the Security Documents, in each case other than those arising under any Loan Document, except, in each case, restrictions existing by reason of:

(i) restrictions imposed by Applicable Law;

(ii) contractual encumbrances or restrictions set forth in the ABL DIP Credit Agreement and Pre-Petition ABL Credit Agreement, subject to the Intercreditor Agreement;

(iii) customary provisions contained in leases, subleases, licenses or sublicenses of Intellectual Property and other similar agreements entered into in the ordinary course of business;

(iv) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(v) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(vi) customary restrictions and conditions contained in any agreement relating to any Disposition permitted under **Section 6.05** pending the consummation of such Disposition;

(vii) customary restrictions and conditions contained in the document relating to any Lien, so long as (A) such Lien is permitted under **Section 6.02** and such restrictions or conditions relate only to the specific asset subject to such Lien and the proceeds and products thereof, and (B) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this **Section 6.09**;

(viii) customary net worth provisions contained in the Real Property leases entered into by Subsidiaries of the Borrower, so long as the Borrower has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations.

Section 6.10 [Reserved].

Section 6.11 Use of Proceeds. The Borrower will not request any Borrowing, and the Borrower shall not use, and shall procure that Holdings, its Subsidiaries and its or their respective directors, officers, employees and agents shall not use directly or indirectly, the proceeds of any Borrowing (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or any Sanctions, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 6.12 [Reserved].

Section 6.13 Prepayments of Other Debt. Other than pursuant to an order of the Court and in accordance with the Approved Budget, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity, other than (i) the Obligations and ABL Obligations or (ii) any payments in respect of accrued payroll and related expenses as of the commencement of the Chapter 11 Cases in accordance with the Approved Budget.

Section 6.14 [Reserved].

Section 6.15 Insolvency Proceeding Claims. No Loan Party shall incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is pari passu with or senior to the claim of the Administrative Agent or the Lenders against the Loan Parties with respect to the Collateral.

Section 6.16 Bankruptcy Actions. No Loan Party shall seek, consent to, or permit to exist, without the prior written consent of the Administrative Agent, any order granting authority to take any action that is prohibited by the terms of this Agreement, the Final Order or the other

Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement, the Final Order or any of the other Loan Documents.

Section 6.17 Subrogation. No Loan Party shall assert any right of subrogation or contribution against any other Loan Party.

Section 6.18 [Reserved].

ARTICLE VII

Events of Default

Section 7.01 Events of Default. In case of the happening of any of the following events (each, an “**Event of Default**”):

(a) any representation, warranty or certification made or deemed made by or on behalf of any Loan Party or any Subsidiary in, or in connection with, this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder (including, without limitation, any Budget Compliance Report or Compliance Certificate), shall prove to have been false or misleading in any material respect when made or deemed made;

(b) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or in the payment of any fee or any other amount (other than an amount referred to in **paragraph (b)** above) due under any Loan Document, when and as the same shall become due and payable;

(d) default shall be made in the due observance or performance by Holdings, the Borrower or any of the Subsidiaries of any covenant, condition or agreement contained in **Sections 5.01, 5.04, 5.05, 5.06, 5.07, 5.13, 5.16, 5.17, 5.18, 5.19, 5.20, 5.21** or in **Article VI**;

(e) default shall be made in the due observance or performance by Holdings, the Borrower or any of the Subsidiaries of any covenant, condition or agreement contained in **Article V** (other than those specified in **paragraphs (b), (c) and (d)** above) and, to the extent such default can be remedied, such default shall continue unremedied for a period of twenty (20) days after notice thereof from the Administrative Agent;

(f) except for defaults occasioned by the filing of the Chapter 11 Cases or entry into this Agreement or resulting from obligations with respect to which the Bankruptcy Code prohibits any Loan Party or any Subsidiary from complying or permits any Loan Party or Subsidiary not to comply (i) any event or condition occurs that (A) results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) enables or permits (with all applicable grace periods having expired) the holder or holders any Material Indebtedness or any

trustee or agent on its or their behalf to cause any such Material Indebtedness become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, (ii) Holdings, the Borrower or any Loan Party fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such payment is not made within any applicable notice or grace period in respect of any Material Indebtedness (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement);

(g) [Reserved];

(h) the occurrence and continuation of an event of default under and as defined in the ABL DIP Credit Agreement that remains uncured or not expressly waived in writing by the ABL DIP Lenders;

(i) [Reserved];

(j) there is entered against Holdings, the Borrower or any Subsidiary one (1) or more final judgments or orders for the payment of money aggregating in excess of \$5.0 million (to the extent not covered by third-party insurance as to which the insurer has been notified of such judgment and does not deny coverage), which judgments are not subject to the Automatic Stay for a period of twenty (20) consecutive days, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of Holdings, the Borrower or any Subsidiary to enforce any such judgment;

(k) (i) an ERISA Event and/or a Foreign Plan Event shall have occurred, (ii) a trustee shall be appointed by a United States district court to administer any Plan(s) or (iii) any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred or will be assessed Withdrawal Liability to such Multiemployer Plan and such Person does not have reasonable grounds for contesting such Withdrawal Liability or is not contesting such Withdrawal Liability in a timely and appropriate manner; and in each case in clauses (i) through (iii) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect;

(l) (i) any Loan Document or any material provision of any Loan Document shall for any reason cease to be, or shall be asserted in writing by Holdings, the Borrower or any Subsidiary not to be, a legal, valid and binding obligation of any party thereto, (ii) except as permitted by the terms of any Security Document, (A) any Security Document shall for any reason fail to create a valid security interest in any Collateral purported to be covered thereby, or (B) the Final Order or any Security Document shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected or recorded Lien on and security interest in any portion of the Collateral purported to be covered thereby, or such Lien or other security interest shall cease to have the status and priority provided in the Final Order or (iii) the Loan Guaranty shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty, or any Subsidiary Guarantor shall deny that it has any further liability under the Loan Guaranty to which it is a party, or shall give notice to such effect;

(m) the provisions of the Intercreditor Agreement shall for any reason be revoked or invalidated, in whole or in part, or otherwise cease to be in full force and effect, or any Loan Party, any agent with respect to the ABL Facilities, or any lender thereunder, or any Affiliate of any of the foregoing shall have commenced a suit or an action, including any motion or adversary proceeding in the Chapter 11 Cases, contesting in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations, for any reason shall not have the priority contemplated by this Agreement or the Intercreditor Agreement;

(n) if there occurs any uninsured loss of any portion of the Collateral with a market or book value in excess of \$2,000,000;

(o) [Reserved];

(p) the Loan Parties shall fail to deliver timely any report or information under the Final Order and such failure shall continue unremedied for a period of twenty (20) days after notice thereof from the Administrative Agent or the Loan Parties shall fail to meet timely any other material deadline under the Final Order;

(q) the occurrence of any of the following in the Chapter 11 Cases:

(i) the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto by any of the Loan Parties or any Subsidiary, or any Person claiming by or through any Loan Party or any Subsidiary, in the Chapter 11 Cases: (A) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement (other than Indebtedness issued in exchange for, or the Net Proceeds of which are used to Refinance, the ABL Obligations so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of the ABL Obligations permitted pursuant to Section 6.01(h) hereof); (B) to grant any Lien other than Liens permitted pursuant to Section 6.02 upon or affecting any Collateral; (C) [reserved]; or (D) any other action or actions materially adverse to the Administrative Agent and Lenders, as a whole, or their rights and remedies hereunder, under any other Loan Documents, or their interest in the Collateral;

(ii) (A) the filing of any plan of reorganization, sale order or disclosure statement attendant thereto, or any direct or indirect amendment to such plan, sale order or disclosure statement, by a Loan Party that does not propose to indefeasibly repay in full in cash the Obligations, or any of the Loan Parties or their Subsidiaries shall seek, support or fail to contest in good faith the filing or confirmation of any such plan or entry of any such order, (B) the entry of any order terminating any Loan Party's exclusive right to file a plan of reorganization, or (C) the expiration of any Loan Party's exclusive right to file a plan of reorganization;

(iii) the entry of an order in any of the Chapter 11 Cases confirming a plan of reorganization that does not contain a provision for termination of the Commitments and indefeasible repayment in full in cash of all of the Obligations on or before the Initial Maturity Date or Extended Maturity Date, as applicable;

(iv) (A) the entry of an order amending, supplementing, staying,

vacating or otherwise modifying the Loan Documents or the Final Order without the written consent of the Administrative Agent or the filing of a motion by the Loan Parties or its Affiliates for reconsideration with respect to the Final Order, or the Final Order shall otherwise not be in full force and effect without the prior written consent of the Administrative Agent and the Required Lenders in their sole discretion, or (B) any Loan Party or any Subsidiary shall fail to comply with the Final Order in any material respect; or

(v) the payment of, or application for authority to pay, any pre-petition claim without Required Lenders' prior written consent unless in accordance with the Approved Budget or pursuant to the Final Order of the Court; or

(vi) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the Administrative Agent, any Lender or any of the Collateral; or

(vii) (A) the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of a trustee receiver or an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Loan Parties; (B) the sale without the Administrative Agent's written consent of all or substantially all of the Loan Parties' assets (which includes the sale of the Collateral) either through a sale under Section 363, through a confirmed plan of reorganization in the Chapter 11 Cases or otherwise that does not result in payment in full in cash of all of the Obligations at the closing of such sale or initial payment of the purchase price or effectiveness of such plan, as applicable; or (C) the entry of a Real Estate Sale Order without the Administrative Agent's written consent that contemplates a Real Estate Sale which does not result in payment in full in cash of all of the Obligations at the closing of such sale; or

(viii) entry of an order for the dismissal or conversion to chapter 7 of title 11 of the Bankruptcy Code of any Loan Party's bankruptcy case; the appointment of a bankruptcy trustee, examiner or other fiduciary with decision making authority except with the express written consent of the Administrative Agent; the granting of any other superpriority administrative expense claim (other than Liens permitted hereunder in favor of the ABL DIP Agent or the Pre-Petition ABL Agent) or the entry of an order granting relief from the Automatic Stay with respect to the Collateral (if not in favor of the Administrative Agent) except with the express written consent of the Administrative Agent; any Loan Party shall attempt to vacate or modify the Final Order over the objection of the Administrative Agent; or any Loan Party shall institute any proceeding or investigation or support same by any other person who seeks to challenge the status and/or validity of the liens of the Administrative Agent (as security for the Lenders); or

(ix) [reserved]; or

(x) the commencement of a suit or an action (but not including a motion for standing to commence a suit or an action) against either the Administrative Agent or any Lender and, as to any suit or action brought by any Person other than a Loan Party or a Subsidiary, officer or employee of a Loan Party, the continuation thereof without dismissal for thirty (30) days after service thereof on either the Administrative Agent or such Lender, that asserts or seeks by or on behalf of a Loan Party, any state or federal environmental protection or health and safety agency,

any official committee in any Chapter 11 Case or any other party in interest in any of the Chapter 11 Cases, a claim or any legal or equitable remedy that would (x) have the effect of invalidating, subordinating or challenging any or all of the Obligations or Liens of the Administrative Agent or any Lender under the Loan Documents to any other claim, or (y) have a Material Adverse Effect on the rights and remedies of the Administrative Agent or any Lender under any Loan Document or the collectability of all or any portion of the Obligations; or

(xi) the entry of an order in the Chapter 11 Cases avoiding or permitting recovery of any portion of the payments made on account of the Obligations owing under Loan Documents; or

(xii) the failure of any Loan Party to perform any of its material obligations under, or the occurrence of an event of default under or as defined in, the Final Order or any order of the Court approving any Plan of Reorganization, a Section 363 Sale, or to perform in any material respect its material obligations under any order of the Court approving bidding procedures; or

(xiii) other than Liens permitted hereunder securing the ABL Facilities, the existence of any claims or charges, or the entry of any order of the Court authorizing any claims or charges, other than in respect of this Agreement and the other Loan Documents, or as otherwise permitted under the applicable Loan Documents or permitted under the Final Order, entitled to superpriority administrative expense claim status in any Chapter 11 Case pursuant to Section 364(c)(1) of the Bankruptcy Code pari passu with or senior to the claims of the Administrative Agent and the Secured Parties under this Agreement and the other Loan Documents, or there shall arise or be granted by the Court (A) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code or (B) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein, except, in each case, as expressly provided in the Loan Documents or in the Final Order (but only in the event specifically consented to by the Administrative Agent), whichever is in effect; or

(xiv) the Final Order shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of Administrative Agent; or

(xv) an order in the Chapter 11 Cases shall be entered charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Administrative Agent and the Secured Parties or the commencement of other actions that is materially adverse to Administrative Agent, the Secured Parties or their respective rights and remedies under the Loan Documents in any of the Chapter 11 Cases or inconsistent with any of the Loan Documents; or

(xvi) [reserved]; or

(xvii) [reserved]; or

(xviii) an order materially adversely impacting the rights and interests of the Administrative Agent and the Lenders, as determined by the Administrative Agent in its

Permitted Discretion, shall have been entered by the Court; or

(xix) any Loan Party shall challenge, support or encourage a challenge of any payments made to the Administrative Agent or any Lender with respect to the Obligations; or

(xx) other than the Specified Store Closing Sales, any Loan Party or any person on behalf of any Loan Party shall file any motion seeking authority to consummate a sale of the Collateral to the extent having a value in excess of \$2,000,000 outside the ordinary course of business and not otherwise permitted hereunder and without the Administrative Agent's consent; or

(xxi) [reserved]; or

(xxii) if, unless otherwise approved by the Administrative Agent, an order of the Court shall be entered providing for a change of venue with respect to any of the Chapter 11 Cases and such order shall not be reversed or vacated within ten (10) days; or

(xxiii) any Loan Party or any Subsidiary thereof shall file any motion or other request with the Court seeking (A) to grant or impose, under Section 364 of the Bankruptcy Code or otherwise, liens or security interests in any DIP Collateral (as defined in the Final Order), whether senior, equal or subordinate to the Administrative Agent's liens and security interests (other than Liens permitted hereunder securing the ABL Facilities); or (B) to modify or affect any of the rights of the Administrative Agent or the Lenders under the Final Order or the Loan Documents and related documents by any plan of reorganization confirmed in the Chapter 11 Cases or subsequent order entered in the Chapter 11 Cases; or

(xxiv) [reserved]; or

(xxv) any Loan Party or any Subsidiary thereof shall take any action in support of any matter set forth in this clause (q) or any other Person shall do so and such application is not contested in good faith by the Loan Parties and the relief requested is granted in an order that is not stayed pending appeal;

then, and in every such event, and at any time thereafter during the continuance of such event, subject to the Final Order and the Intercreditor Agreement and the terms thereof and notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion, hearing before, or order of the Court, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, whereupon the Commitments shall terminate immediately, but without affecting the Administrative Agent's Liens or the Obligations, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all reasonable fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding, (iii) subject to the Remedies Notice Period, direct any or all of the Loan Parties

to sell or otherwise dispose of any or all of the Collateral (subject to the Intercreditor Agreement) on terms and conditions acceptable to the Administrative Agent pursuant to Section 363, Section 365 and other applicable provisions of the Bankruptcy Code (and, without limiting the foregoing, direct any Loan Party to assume and assign any lease or executory contract included in the Collateral (subject to the Intercreditor Agreement) to the Administrative Agent's designees in accordance with and subject to Section 365 of the Bankruptcy Code); and/or (iv) subject to the Remedies Notice Period, (A) exercise on behalf of itself and the Secured Parties all rights and remedies available to it and the Secured Parties under the Loan Documents or Applicable Law or (B) take any and all actions described in the Final Order, including, without limitation, those actions specified in the Final Order after the occurrence of any Event of Default.

At any hearing during the Remedies Notice Period to contest the enforcement of remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred, and the Loan Parties hereby waive their right to and shall not be entitled to seek relief, including, without limitation, under Section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights and remedies of the Administrative Agent or the Secured Parties, as set forth in this Agreement, the Final Order or other Loan Documents. It is agreed and understood that the Administrative Agent may not charge default interest pursuant to this Agreement during such time as the occurrence of such Event of Default is being contested during the Remedies Notice Period but once determined that such Event of Default exists, the Administrative Agent may charge default interest pursuant to this Agreement retroactively to cover the period from which the Event of Default exists through the date of determination.

The Automatic Stay shall terminate with respect to the Collateral, and the Administrative Agent may exercise rights and remedies in accordance with the Loan Documents and Applicable Law. Notwithstanding the foregoing, the Lenders shall not be obligated to provide any Loans at any time a default or an Event of Default has occurred.

The Administrative Agent (together with its agents, representatives and designees) is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any and all Trademarks, tradenames, and service marks related to the name "Tuesday Morning" now owned or hereafter acquired by the Loan Parties, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral, in each case, after the occurrence and during the continuance of an Event of Default, subject to the rights, remedies and priorities under the Final Order and the Intercreditor Agreement. The Administrative Agent (together with its agents, representatives and designees) is hereby granted a non-exclusive right to have access to, and a rent-free right to use, any and all owned locations (including, without limitation, warehouse locations, distribution centers and store locations) for the purpose of arranging for and effecting the sale or disposition of Collateral, subject to the Intercreditor Agreement. Upon the occurrence and the continuance of an Event of Default and the exercise by the Administrative Agent or Lenders of their rights and remedies under this Agreement and the other Loan Documents, the Loan Parties shall assist the Administrative Agent and Lenders in effecting a sale or other disposition of the Collateral upon such terms as are reasonably acceptable to the Administrative Agent, subject to the Final Order and the Intercreditor Agreement.

Section 7.02 Allocation. Notwithstanding anything herein to the contrary, but subject to the Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default, monies to be applied to the Obligations, whether arising from payments by the Loan Parties, realization on Collateral, setoff or otherwise, shall be allocated as follows:

(a) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses (including extraordinary expenses) and other amounts, owing to the Administrative Agent in its capacity as such;

(b) second, to payment of that portion of the Obligations constituting indemnities, expenses, and other amounts (other than principal, interest and fees) payable to the Lenders, ratably among them in proportion to the amounts described in this clause second payable to them;

(c) third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations, and fees, ratably among the Lenders in proportion to the respective amounts described in this clause third payable to them;

(d) fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause fourth held by them; and

(e) last, the balance, if any, after all of the Obligations have been paid in full, to the Loan Parties or as otherwise required by the Intercreditor Agreement.

Amounts shall be applied to each category of Obligations set forth above until Full Payment thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. The allocations set forth in this Section 7.02 are solely to determine the rights and priorities of the Administrative Agent and the Secured Parties as among themselves, and may, except as set forth in the next sentence, be changed by agreement among them without the consent of any Loan Party. If any monies remain after distribution to all of the categories above, such monies shall be returned to the Borrower.

ARTICLE VIII

The Administrative Agent

Section 8.01 Appointment, Authority and Duties of the Administrative Agent.

(a) Appointment and Authority. Each Secured Party hereby irrevocably appoints and designates Franchise Group, Inc. as the Administrative Agent under all Loan Documents and Franchise Group, Inc. hereby accepts such appointments. The Administrative Agent may, and each Secured Party authorizes the Administrative Agent to, enter into all Loan Documents to which the Administrative Agent is intended to be a party and accept all Security Documents, for the benefit of Secured Parties. Each Secured Party agrees that any action taken by the Administrative Agent or Required Lenders in accordance with the provisions of the Loan Documents, and the exercise by the Administrative Agent or Required Lenders of any rights or

remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, the Administrative Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as the Administrative Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from any Loan Party or other Person; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. No Secured Party shall have any right individually to take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. The duties of the Administrative Agent shall be ministerial and administrative in nature, and the Administrative Agent shall not have a fiduciary relationship with any Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto.

(b) Duties. The Administrative Agent shall not have any duties except those expressly set forth in the Loan Documents. The conferral upon the Administrative Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Required Lenders in accordance with this Agreement.

(c) Agent Professionals. The Administrative Agent may perform its duties through agents and employees. The Administrative Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional.

(d) Instructions of Required Lenders. The rights and remedies conferred upon the Administrative Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. The Administrative Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against all Claims that could be incurred by the Administrative Agent in connection with any act. The Administrative Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and the Administrative Agent shall not incur liability to any Lender by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting in accordance with the instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific Lenders or Secured Parties shall be required to the extent provided in **Section 9.08(b)**. In no event shall the Administrative Agent be required to take any action that, in its opinion, is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to personal liability.

Section 8.02 Agreements Regarding Collateral.

(a) [Reserved].

(b) Reports. The Administrative Agent shall promptly forward to each Lender, when complete, copies of any appraisal report prepared by or for the Administrative Agent with respect to any Loan Party or Collateral ("**Report**"). Each Lender agrees (i) that neither Franchise Group, Inc. nor the Administrative Agent makes any representation or warranty as to the accuracy or completeness of any Report, and shall not be liable for any information contained in or omitted from any Report; (ii) that the Reports are not intended to be comprehensive audits or examinations, and that the Administrative Agent or any other Person performing any audit or examination will inspect only specific information regarding the Collateral and will rely significantly upon the Borrower's books and records as well as upon representations of the Borrower's officers and employees; and (iii) to keep all Reports confidential in accordance with **Section 9.16** and not to distribute or use any Report in any manner other than administration of the Loans and other Obligations. Each Lender shall indemnify and hold harmless the Administrative Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Report, as well as from any Claims arising as a direct or indirect result of the Administrative Agent furnishing a Report to such Lender.

Section 8.03 Reliance By the Administrative Agent. The Administrative Agent shall be entitled to rely, and shall not incur any liability in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy or e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and upon the advice and statements of Agent Professionals. The Administrative Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any such delay in acting.

Section 8.04 Action Upon Default. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in **Article IV**, unless it has received written notice from the Borrower or Required Lenders specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify the Administrative Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except with the written consent of the Required Lenders, it will not take any Enforcement Action, accelerate Obligations, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral or to assert any rights relating to any Collateral.

Section 8.05 Payments Received by Defaulting Lender. If a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the amount thereof to the Administrative Agent for application under **Section 2.18** and it shall provide a written statement to the Administrative Agent describing the Obligation affected by such payment or reduction.

Section 8.06 Limitation on Responsibilities of the Administrative Agent. The Administrative Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses to the extent caused by the Administrative Agent's gross negligence or willful misconduct. The Administrative Agent does not assume any responsibility for any failure or delay in performance or any breach by any Loan Party, Lender or other Secured Party of any obligations under the Loan Documents. The Administrative Agent

does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Loan Documents or Loan Party. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Loan Party or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Loan Party of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

Section 8.07 Successor Administrative Agent.

(a) **Resignation; Successor Administrative Agent.** Subject to the appointment and acceptance of a successor Administrative Agent as provided below, the Administrative Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and the Borrower. Upon receipt of such notice, Required Lenders shall have the right, in consultation with (and with the consent of) the Borrower, to appoint a successor Administrative Agent which shall be (i) a Lender or an Affiliate of a Lender; or (ii) a commercial bank that is organized under the laws of the United States or any state or district thereof, has a combined capital surplus of at least \$1,000,000,000 and (provided no Event of Default exists under **Sections 7.01(b)** (with respect to the Borrower only)) is subject to the approval of the Borrower. If no successor agent is appointed prior to the date that is 30 days from the effective date of the resignation of the Administrative Agent, then the Administrative Agent may appoint a successor agent from among the Lenders or, if no Lender accepts such role, the Administrative Agent may appoint Required Lenders as successor Administrative Agent. Upon acceptance by a successor Administrative Agent of an appointment to serve as the Administrative Agent hereunder, or upon appointment of Required Lenders as successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Administrative Agent without further act, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder but shall continue to have the benefits of the indemnification set forth in **Section 8.15**. Notwithstanding any Administrative Agent's resignation, the provisions of this **Section 8.07** shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while the Administrative Agent. Any successor to Franchise Group, Inc. by merger or acquisition of stock or this loan shall continue to be the Administrative Agent hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above.

(b) **[Reserved]**.

Section 8.08 Due Diligence and Non-Reliance. Each Lender acknowledges and agrees that it has, independently and without reliance upon the Administrative Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Loan Party and its own decision to enter into this Agreement and to fund Loans hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Loan Parties. Each Secured Party acknowledges

and agrees that the other Secured Parties have made no representations or warranties concerning any Loan Party, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly required to be furnished to or expressly requested by a Lender, the Administrative Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to the Administrative Agent by any Loan Party or any credit or other information concerning the affairs, financial condition, business or properties of any Loan Party (or any of its Affiliates) which may come into possession of the Administrative Agent and its Affiliates.

Section 8.09 Remittance of Payments and Collections.

(a) Remittances Generally. All payments by any Lender to the Administrative Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified, payment shall be made by Lender not later than 2:00 p.m. (Local Time) on such day. Payment by the Administrative Agent to any Secured Party shall be made by wire transfer, in the type of funds received by the Administrative Agent. Any such payment shall be subject to the Administrative Agent's right of offset for any amounts due from such payee under the Loan Documents.

(b) Failure to Pay. If any Secured Party fails to pay any amount when due by it to the Administrative Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate determined by the Administrative Agent as customary in the banking industry for interbank compensation. In no event shall Borrower be entitled to receive credit for any interest paid by a Secured Party to the Administrative Agent, nor shall any Defaulting Lender be entitled to interest on any amounts held by the Administrative Agent pursuant to **Section 2.18.**

(c) Recovery of Payments. If the Administrative Agent pays any amount to a Secured Party in the expectation that a related payment will be received by the Administrative Agent from a Loan Party and such related payment is not received, then the Administrative Agent may recover such amount from each Secured Party that received it. If the Administrative Agent determines at any time that an amount received under any Loan Document must be returned to a Loan Party or paid to any other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, the Administrative Agent shall not be required to distribute such amount to any Lender. If any amounts received and applied by the Administrative Agent to any Obligations are later required to be returned by the Administrative Agent pursuant to Applicable Law, each Lender shall pay to the Administrative Agent, on demand, such Lender's Pro Rata share of the amounts required to be returned.

Section 8.10 The Administrative Agent in its Individual Capacity. As a Lender, Franchise Group, Inc. shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders" or any similar term shall include Franchise Group, Inc. in its capacity as a Lender. Franchise Group, Inc. and its Affiliates may

accept deposits from, lend money to, act as financial or other advisor to, and generally engage in any kind of business with, Loan Parties and their Affiliates, as if Franchise Group, Inc. were not the Administrative Agent hereunder, without any duty to account therefor to the Lenders. In their individual capacities, Franchise Group, Inc. and its Affiliates may receive information regarding Loan Parties, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Secured Party agrees that Franchise Group, Inc. and its Affiliates shall be under no obligation to provide such information to any Secured Party, if acquired in such individual capacity.

Section 8.11 Administrative Agent Titles. Each Lender, other than Franchise Group, Inc., that is designated (on the cover page of this Agreement or otherwise) by Franchise Group, Inc. as an “agent” of any type shall not have any right, power, responsibility or duty under any Loan Documents other than those applicable to all Lenders in their capacity as such, and shall in no event be deemed to have any fiduciary relationship with any other Lender.

Section 8.12 [Reserved].

Section 8.13 Survival. This **Article VIII** shall survive Full Payment of the Obligations. Other than **Sections 8.01, 8.04** and **8.07**, this **Article VIII** does not confer any rights or benefits upon Borrower or any other Person. As between Borrower and Administrative Agent, any action that Administrative Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

Section 8.14 Withholding Tax.

To the extent required by any Applicable Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of **Section 2.15**, each Lender shall indemnify and hold harmless the Administrative Agent against, within 10 days after written demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including reasonable fees, charges and disbursements of any counsel Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this **Section 8.14**. The agreements in this **Section 8.14** shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

Section 8.15 Indemnification. The Lenders agree to indemnify Administrative Agent in its capacity as such (to the extent not reimbursed by Holdings or the Borrower and without limiting

the obligation of Holdings or the Borrower to do so), each in an amount equal to its pro rata share (based on its Commitments hereunder (or if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of its applicable outstanding Loans)) thereof, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the Administrative Agent's gross negligence or willful misconduct. The agreements in this **Section 8.15** shall survive the payment of the Loans and all other amounts payable hereunder.

Section 8.16 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration

of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 8.17 Flood Laws. The Administrative Agent has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "Flood Laws"). The Administrative Agent will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, the Administrative Agent reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

ARTICLE IX

Miscellaneous

Section 9.01 Notices.

(a) Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax or other electronic transmission, (including by ".pdf" or ".tif") pursuant to the terms of this Agreement, as follows:

(i) if to any Loan Party, to Tuesday Morning, Inc., 6250 LBJ Freeway, Dallas, Texas 75240, Attention: Stacie Shirley, Telecopier: (972) 934-7231, Electronic Address: sshirley@tuesdaymorning.com, with a copy to Tuesday Morning, Inc., 6250 LBJ Freeway, Dallas, Texas 75240, Attention: Steven R. Becker, Electronic Address: sbecker@tuesdaymorning.com, with a copy to Haynes and Boone LLP, 2323 Victory Ave. Suite 700, Dallas, Texas 75219, Attention: Ian Peck, Electronic Address: ian.peck@haynesboone.com, and a copy to the Official Committee of Unsecured Creditors, c/o Montgomery McCracken Walker & Rhoads LLP, 437 Madison Ave., 24th Floor, New York, NY 10022, Attention: Gilbert R. Saydah, Jr., Edward L.

Schnitzer, David M. Banker, gsaydah@mmwr.com, eschnitzer@mmwr.com, and dbanker@mmwr.com and Munsch Hardt Kopf & Harr, P.C., 500 N. Akard Street, Suite 3800, Dallas, Texas 75201-6659, Attention Kevin M. Lippman, Deborah M. Perry, klippman@munsch.com, dperry@munsch.com;

(ii) if to the Administrative Agent, to Franchise Group, Inc., 4705 S. Apopka Vineland Road, Suite 206, Orlando, FL 32819, Attention: Brian Kahn, Electronic Address: bkahn@vintcap.com, Telecopier: (208) 728-8007, with a copy to each of: (a) Franchise Group, Inc., 627 Harland Street, Milton, MA 02186, Attention: Andrew Lawrence, Electronic Address: alaurence@vintcap.com and (b) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attention: John C. Longmire and Daniel Durschlag, Electronic Addresses: JLongmire@willkie.com and DDurschlag@willkie.com; or

(iii) if to a Lender, to it at the address, fax number or electronic address set forth on **Schedule 2.01** or in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to **Article II** unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided, further, that approval of such procedures may be limited to particular notices or communications.

(c) All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service, sent by fax or (to the extent permitted by **paragraph (b)** above) electronic means or on the date five (5) Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this **Section 9.01** or in accordance with the latest unrevoked direction from such party given in accordance with this **Section 9.01**.

(d) Any party hereto may change its address or fax number for notices and other communications hereunder by notice to the other parties hereto.

Section 9.02 Survival of Agreement. All representations and warranties made by the Loan Parties herein and in the other Loan Documents shall be considered to have been relied upon by the Lenders and shall survive the making of the Loans, the execution and delivery of the Loan Documents, and shall continue in full force and effect until the Termination Date. Without prejudice to the survival of any other agreements contained herein, obligations for taxes, costs, indemnifications, reimbursements, damages and other contingent liabilities contained herein (including pursuant to **Sections 2.12, 2.14** and **9.05**) shall survive the payment in full of the principal and interest hereunder and the termination of the Commitments or this Agreement, limited in the manner set forth herein.

Section 9.03 Binding Effect. This Agreement shall become effective on the later of (a) when it shall have been executed by Holdings, the Borrower and the Administrative Agent and when the Administrative Agent shall have received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of Holdings, the Borrower, the Administrative Agent and each Lender and their respective permitted successors and assigns, and (b) it receives Court approval.

Section 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) except as otherwise permitted by Section 6.05 the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section 9.04), and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Subject to the conditions set forth in clause (ii) below, any Lender may assign to one (1) or more Eligible Assignees (other than to any natural person) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) (provided, however, that pro rata assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and any related Commitment) with the prior written consent (such consent not to be unreasonably withheld or delayed) of the Administrative Agent, provided that no consent of the Administrative Agent shall be required if such assignment is to a Lender, an Affiliate of a Lender or a Related Fund in respect of a Lender.

(c) Assignments shall be subject to the following additional conditions:

(i) except in the case of an assignment to a Lender, an affiliate of a Lender or Related Fund or an assignment of the entire remaining amount of the assigning Lender's Commitments or Loans, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5.0 million, unless the Administrative Agent otherwise consents, provided that such amounts shall be aggregated in respect of each Lender and its Affiliates or Related Funds, if any;

(ii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance together with a processing and recordation fee of \$3,500; and

(iii) the Eligible Assignee, if it shall not be a Lender, shall deliver to the

Administrative Agent an Administrative Questionnaire (to the extent requested by the Administrative Agent) and all applicable tax forms.

(d) Subject to acceptance and recording thereof pursuant to clause (f) below and subject to clause (k) below, from and after the effective date specified in each Assignment and Acceptance the Eligible Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12, 2.14 and 9.05 as well as any fees accrued for its account and not yet paid). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section 9.04.

(e) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Loans owing to, each Lender, pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender (with respect to any entry related to such Lender's Loans), at any reasonable time and from time to time upon reasonable prior notice.

(f) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Eligible Assignee (subject to clause (f)), the Eligible Assignee's completed Administrative Questionnaire (if requested by the Administrative Agent) (unless the Eligible Assignee shall already be a Lender hereunder) and any applicable tax forms, and any written consent to such assignment required by clause (i) above, the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (f).

(g) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one (1) or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any

agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; provided that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that requires the consent of each Lender directly affected thereby pursuant to Section 9.04(a)(i) or clauses (i) through (vi) of the first proviso to Section 9.08(b). Subject to paragraph (h) of this Section 9.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12 and 2.14 (subject to the requirements and limitations with respect thereto it being understood that the documentation required under Section 2.14(e) shall be delivered to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.06 as though it were a Lender, provided such Participant shall be subject to Section 2.15(d) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(h) A Participant shall not be entitled to receive any greater payment under Section 2.12 or 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a change in Applicable Law that occurs after the Participant acquired the participation. A Participant shall not be entitled to the benefits of Section 2.14 to the extent such Participant fails to comply with Section 2.14(e) as though it were a Lender (it being understood that the documentation required under Section 2.14(e) shall be delivered to the participating Lender).

(i) Any Lender may at any time, without the consent of or notice to the Administrative Agent or the Borrower, pledge or assign a security interest in all or any portion of its rights under this Agreement (other than to a natural person) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee (including any Eligible Assignee) for such Lender as a party hereto.

(j) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in **paragraph (d)** above.

(k) If any assignment or participation under this **Section 9.04** is made (or attempted to be made) to the extent the Borrower's consent is required under the terms of this **Section 9.04**, to any other Person without the Borrower's consent, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (A) terminate the Commitments of such Lender and repay all obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender or participant as of such termination date (in the case of any participation in any Loan, to be applied to such participation), or (B) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in this **Section 9.04**), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Lender shall have received payment of an amount equal to the lesser of par or the amount such Lender paid for such Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (ii) [reserved], and (iii) such assignment shall otherwise comply with this **Section 9.04** (provided that no registration and processing fee referred to in this **Section 9.04** shall be owing in connection with any assignment pursuant to this paragraph). Each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender, as assignor, any Assignment and Acceptance necessary to effectuate any assignment of such Lender's interests hereunder to an assignee as contemplated hereby in the circumstances contemplated by this **Section 9.04(k)**. Nothing in this **Section 9.04(k)** shall be deemed to prejudice any rights or remedies the Borrower may otherwise have at law or equity.

(l) If the Borrower wishes to replace all of the Loans or Commitments with ones having different terms, it shall have the option, with the consent of the Administrative Agent and subject to at least three (3) Business Days' advance notice to the Lenders, instead of prepaying the Loans or reducing or terminating the Commitments to be replaced to (i) require the Lenders to assign the Loans or Commitments to the Administrative Agent or its designees and (ii) amend the terms thereof in accordance with **Section 9.08**. Pursuant to any such assignment, all Loans or Commitments to be replaced shall be purchased at par (allocated among the Lenders in the same manner as would be required if such Loans were being optionally prepaid or such Commitments were being optionally reduced or terminated by the Borrower), accompanied by payment of any accrued interest and fees thereon and any amounts owing pursuant to **Section 9.05(b)**. By receiving such purchase price, the Lenders shall automatically be deemed to have assigned the Loans or Commitments pursuant to the terms of the form of Assignment and Acceptance attached hereto as Exhibit A, and accordingly no other action by such Lenders shall be required in connection therewith. The provisions of this **paragraph (l)** are intended to facilitate the maintenance of the perfection and priority of existing security interests in the Collateral during any such replacement.

Section 9.05 Expenses; Indemnity.

(a) The Borrower agrees to pay within thirty (30) days of demand thereof (together with backup documentation supporting such request) (i) all reasonable and documented (in summary format) expenses (including Other Taxes) incurred by the Administrative Agent in connection with the preparation of this Agreement and the other Loan Documents, or by the Administrative Agent in connection with the syndication of the Commitments or the administration of this Agreement (including expenses incurred in connection with due diligence and initial and ongoing Collateral examination to the extent incurred with the reasonable prior approval of the Borrower and the reasonable and documented (in summary format) fees, disbursements and charges for no more than one (1) outside counsel and, if necessary one (1) local counsel in each material jurisdiction where Collateral is located for such Persons, taken as a whole) or in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the Transactions hereby contemplated shall be consummated) and (ii) all reasonable and documented (in summary format) expenses incurred by the Administrative Agent or any Lender in connection with the enforcement or protection of their rights in connection with this Agreement and the other Loan Documents, in connection with the Loans made (but limited, in the case of legal fees and expenses, to the actual reasonable and documented (in summary format) fees, charges and disbursements of Willkie Farr & Gallagher LLP, counsel for the Administrative Agent, and, if reasonably necessary (x) the reasonable and documented (in summary format) fees, charges and disbursements of one (1) local counsel per relevant local jurisdiction and (y) in the case of an actual or potential conflict of interest, the reasonable and documented (in summary format) fees, charges and disbursements of one (1) additional counsel to all affected Persons, taken as a whole).

(b) The Borrower agrees to indemnify, on a joint and several basis, the Administrative Agent, each Lender and each of their respective Affiliates, successors and assigns and the directors, trustees, officers, employees, advisors, controlling Persons and agents of each of the foregoing (each such Person being called an “Indemnatee”) against, and to hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and reasonable and documented (in summary format) costs and related expenses (including reasonable and documented (in summary format) documented fees, charges and disbursements of Willkie Farr & Gallagher LLP and, if necessary, one (1) local counsel in each relevant local jurisdiction to the Administrative Agent, and, in the case of an actual or potential conflict of interest, one (1) additional counsel to all affected Indemnitees, taken as a whole) incurred by or asserted against any Indemnatee arising out of, relating to, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Transactions (including the payment of the Transaction Costs) and the other transactions contemplated hereby, (ii) the use of the proceeds of the Loans or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnatee is a party thereto, provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or costs or related expenses (x) are determined by a judgment of a court of competent jurisdiction to have resulted by reason of the gross negligence, bad faith or willful misconduct of, or material breach by, such Indemnatee, (y) arise out of any claim, litigation, investigation or proceeding brought by such Indemnatee (or its Related Parties) against another Indemnatee (or its Related Parties) (other than any claim, litigation, investigation or proceeding brought by or against the Administrative Agent, acting in its capacity as Administrative Agent) that does not involve any act or omission of the Borrower or

any of its Subsidiaries and arises out of disputes among the Lenders and/or their transferees. The Borrower shall not be liable for any settlement of any proceeding referred to in this **Section 9.05** effected without the Borrower's written consent (such consent not to be unreasonably withheld or delayed); provided, however, that the Borrower shall indemnify the Indemnitees from and against any loss or liability by reason of such settlement if the Borrower was offered the right to assume the defense of such proceeding and did not assume such defense or such proceeding was settled with the written consent of the Borrower, subject to, in each case, the Borrower's right in this **Section 9.05** to claim an exemption from such indemnity obligations. The Borrower shall indemnify the Indemnitees from and against any final judgment for the plaintiff in any proceeding referred to in this **Section 9.05**, subject to the Borrower's right in this **Section 9.05** to claim an exemption from such indemnity obligations. The Borrower shall not, without the prior written consent of any Indemnitee, effect any settlement of any pending or threatened proceeding in respect of which such Indemnitee is a party and indemnity could have been sought hereunder by such Indemnitee unless such settlement (i) includes an unconditional release of such Indemnitee (and its Related Parties) from all liability or claims that are the subject matter of such proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any Indemnitee (or its Related Parties). To the extent permitted by Applicable Law, each party hereto hereby waives for itself (and, in the case of the Borrower, for each other Loan Party) any claim against any Loan Party, any Lender, any Administrative Agent, any Lender Party, and their respective affiliates, directors, employees, attorneys, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party hereto (and in the case of the Borrower on behalf of each other Loan Party) hereby waive, release and agree not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that nothing contained in this sentence shall limit the Borrower's indemnity obligations to the extent such special, indirect, consequential or punitive damages are included in any third party claim in connection with which such indemnified Person is entitled to indemnification hereunder. The provisions of this **Section 9.05** shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the termination of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent or any Lender. All amounts due under this **Section 9.05** shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(c) Except as expressly provided in **Section 9.05(a)** with respect to Other Taxes, which shall not be duplicative with any amounts paid pursuant to **Section 2.14**, this **Section 9.05** shall not apply to Taxes other than Taxes arising from a non-Tax claim.

(d) Notwithstanding the foregoing paragraphs in this **Section 9.05**, if it is found by a final, non-appealable judgment of a court of competent jurisdiction in any such action,

proceeding or investigation that any loss, claim, damage, liability or cost or related expense of any Indemnatee has resulted from the gross negligence, bad faith or willful misconduct of such Indemnatee (or any of its Related Parties) or a material breach of the Loan Documents by such Indemnatee (or any of its Related Parties), such Indemnatee will repay such portion of the reimbursed amounts previously paid to such Indemnatee under this **Section 9.05** that is attributable to expenses incurred in relation to the set or omission of such Indemnatee which is the subject of such finding.

Section 9.06 **Right of Set-off.** If an Event of Default shall have occurred and be continuing, upon the written consent of the Administrative Agent or the Required Lenders, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender to or for the credit or the account of Holdings, the Borrower or any Subsidiary Guarantor (and such Lender will provide prompt notice to such Loan Party) against any of and all the obligations of Holdings or the Borrower now or hereafter existing under this Agreement or any other Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although the obligations may be unmatured. The rights of each Lender under this **Section 9.06** are in addition to other rights and remedies (including other rights of set-off) that such Lender may have.

Section 9.07 **Applicable Law.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

Section 9.08 **Waivers; Amendment.**

(a) No failure or delay of the Administrative Agent or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by Holdings, the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by **paragraph (b)** below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on Holdings, the Borrower or any other Loan Party in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

(b) Subject to **Section 2.11(b)**, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (A) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower and the Required Lenders and (B) in the case of any other Loan Document,

pursuant to an agreement or agreements in writing entered into by each party thereto and the Administrative Agent; provided, however, that the Official Committee of Unsecured Creditors shall be provided with the proposed waiver, amendment or modification and if the Official Committee of Unsecured Creditors has objections thereto, the Official Committee of Unsecured Creditors may seek to have such objection addressed on an expedited basis by the Court with notice to the Loan Parties and the Administrative Agent, and such proposed modifications to this Agreement or other Loan Document shall not become effective until the Court rules on the Official Committee of Unsecured Creditors' objection; provided, further, that no such agreement shall:

(i) decrease or forgive the principal amount of, or extend the final maturity date of, or decrease the rate of interest on, any Loan, without the prior written consent of each Lender directly and adversely affected thereby; provided, that (x) consent of Required Lenders shall not be required for any waiver, amendment or modification contemplated by this clause (i), and (y) that waiver or reduction of a post-default increase in interest shall be effective with the consent of the Required Lenders (and shall not require the consent of each directly and adversely affected Lender),

(ii) increase the Commitment of any Lender,

(iii) extend the Commitment of any Lender without the prior written consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default, mandatory prepayments or of a mandatory reduction in the aggregate Commitments shall not constitute an increase or extension of maturity); provided, that consent of Required Lenders shall not be required for any waiver, amendment or modification contemplated by this clause (iii),

(iv) except to the extent necessary to give effect to the express intentions of this Agreement (including Section 9.04), which, in respect of any amendment or modification to effect such express intentions, shall be effective with the consent of the Required Lenders, amend or modify any provision of Section 2.15 of this Agreement in a manner that would by its terms alter the pro rata sharing of payments required thereby, without the prior written consent of each Lender,

(v) amend or modify the provisions of Section 7.02, Sections 9.08(a), (b) or (c) or reduce the voting percentage set forth in the definition of "Required Lenders", without the prior written consent of each Lender directly and adversely affected thereby (it being understood that any additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Loans and Commitments are included on the Closing Date),

(vi) (x) release all or substantially all the Collateral (it being understood that a transaction permitted under Section 6.05 shall not constitute a release of all or substantially all of the Collateral), or release all or substantially all of the value of the Guarantees (except as otherwise permitted herein (including in connection with a transaction permitted under Section 6.05) or in the other Loan Documents) under the Security Documents, or (y) subordinate the Liens of the Administrative Agent under the Security Documents with respect to all or substantially all of the Collateral or subordinate the Obligations hereunder, without the prior

written consent of each Lender,

provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent acting as such at the effective date of such agreement. Each Lender shall be bound by any waiver, amendment or modification authorized by this **Section 9.08** and any consent by any Lender pursuant to this **Section 9.08** shall bind any successor or assignee of such Lender. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (x) the Commitments of such Lender may not be increased or extended without the consent of such Lender and (y) the principal and accrued and unpaid interest of such Lender's Loans shall not be reduced or forgiven without the consent of such Lender.

(c) Without the consent of the Administrative Agent or Lender and approval of the Court, the Loan Parties and the Administrative Agent may (in their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with Applicable Law.

(d) Notwithstanding anything to the contrary contained in this **Section 9.08** or any Loan Document, (i) the Borrower and the Administrative Agent may, without the input or consent of any other Lender, effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Borrower and the Administrative Agent to effect the provisions of **Sections 2.18** or **9.04(f)**, (ii) if the Administrative Agent and the Borrower have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision and (iii) guarantees, collateral security documents and related documents executed by Holdings or Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be amended, supplemented or waived without the consent of any Lender if such amendment, supplement or waiver is delivered in order to (x) comply with local law or advice of local counsel, (y) cure ambiguities, omissions, mistakes or defects or (z) cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

Section 9.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate on any Loan, together with all fees and charges that are treated as interest under Applicable Law (collectively, the "**Charges**"), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender shall exceed the maximum lawful rate (the "**Maximum Rate**") that may be contracted for, charged, taken, received or reserved by such Lender in accordance with Applicable Law, the rate of interest payable hereunder, together with all Charges payable to such Lender shall be limited to the Maximum Rate, provided that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation.

Section 9.10 Entire Agreement. This Agreement and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto, and their respective successors and assigns permitted hereunder, any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

Section 9.11 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.11 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 9.12 Severability. In the event any one (1) or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 9.13 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall constitute an original but all of which, when taken together, shall

constitute but one (1) contract, and shall become effective as provided in **Section 9.03**. Delivery of an executed counterpart to this Agreement by facsimile transmission or other electronic transmission (including by “.pdf” or “.tif”) shall be as effective as delivery of a manually signed original.

Section 9.14 **Headings**. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 9.15 **Jurisdiction; Consent to Service of Process**.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Court, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in such Court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in such Court.

(c) Each of the parties hereto agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested at its address provided in **Section 9.01** agrees that service as so provided in is sufficient to confer personal jurisdiction over the applicable credit party in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and agrees that agents and lenders retain the right to serve process in any other manner permitted by law or to bring proceedings against any credit party in the courts of any other jurisdiction.

Section 9.16 **Confidentiality**. Each of the Lenders and the Administrative Agent agree that it shall maintain in confidence any information relating to Holdings, the Borrower and the other Loan Parties furnished to it by or on behalf of Holdings, the Borrower or the other Loan Parties (other than information that (a) has become generally available to the public other than as a result of a disclosure by any such party, (b) was already in possession on a non-confidential basis for a person not known to the recipient to be bound by confidentiality obligations to Parent or any Subsidiary thereof or has been independently developed by such Lender or the Administrative Agent without violating this **Section 9.16** or relying on any such information, (c) was available to such Lender or the Administrative Agent from a third party having, to such Person's knowledge, no obligations of confidentiality to Holdings, the Borrower or any other Loan Party) and shall not reveal the same other than to its directors, trustees, officers, employees and advisors with a need to know or to any Person that approves or administers the Loans on behalf of such Lender (so long

as each such Person shall have been instructed to keep the same confidential in accordance with this **Section 9.16** and such Lender and the Administrative Agent shall be responsible for its Affiliates' compliance with this **Section 9.16** except to the extent such Affiliate shall sign a written confidentiality agreement in favor of the Borrower), except: (i) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, self-regulatory authorities (including the National Association of Insurance Commissioners) or of any securities exchange on which securities of the disclosing party or any affiliate of the disclosing party are listed or traded (in which case such Lender or the Administrative Agent will promptly notify the Borrower, in advance, to the extent permitted by Applicable Law or the rules governing the process requiring such disclosure (except with respect to any routine or ordinary course audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority) and shall use its commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (ii) as part of the reporting or review procedures to, or examinations by, Governmental Authorities or self-regulatory authorities, including the National Association of Insurance Commissioners or the National Association of Securities Dealers, Inc., (iii) to its parent companies, affiliates, auditors, assignees, transferees and participants (so long as each such Person shall have been instructed to keep the same confidential in accordance with provisions not less restrictive than this **Section 9.16** and such Lender and the Administrative Agent shall be responsible for its Affiliates' compliance with this **Section 9.16**), (iv) in order to enforce its rights under any Loan Document in a legal proceeding (in which case it shall use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (v) to any pledgee under **Section 9.04(d)** or any other existing or prospective assignee of, or existing or prospective Participant in, any of its rights under this Agreement (so long as such Person shall have been instructed to keep the same confidential in accordance with this **Section 9.16** or other provisions at least as restrictive as this **Section 9.16**), and (vi) with the consent of the Borrower. In addition, Administrative Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Administrative Agent and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents to which a Lender Party is a party.

Section 9.17 **[Reserved]**.

Section 9.18 **USA PATRIOT Act**. Each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the USA PATRIOT Act.

Section 9.19 **Marshalling; Payments Set Aside**. Neither the Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Loan Party makes a payment or payments to the Administrative Agent or the Lenders (or to the Administrative Agent, on behalf of the Lenders), or the Administrative Agent or the Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated,

declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

Section 9.20 Obligations Several; Independent Nature of Lenders' Rights. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 9.21 Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any assignment agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 9.22 Acknowledgements. Each of Loan Party hereby acknowledges and agrees that (a) no fiduciary, advisory or agency relationship between the Loan Parties and the Lender Parties is intended to be or has been created in respect of any of the transactions contemplated by this Agreement or the other Loan Documents, irrespective of whether the Lender Parties have advised or are advising the Loan Parties on other matters, and the relationship between the Lender Parties, on the one hand, and the Loan Parties, on the other hand, in connection herewith and therewith is solely that of creditor and debtor, (b) the Lender Parties, on the one hand, and the Loan Parties, on the other hand, have an arm's length business relationship that does not directly or indirectly give rise to, nor do the Loan Parties rely on, any fiduciary duty to the Loan Parties or their affiliates on the part of the Lender Parties, (c) the Loan Parties are capable of evaluating and understanding, and the Loan Parties understand and accept, the terms, risks and conditions of the transactions contemplated by this Agreement and the other Loan Documents, (d) the Loan Parties have been advised that the Lender Parties are engaged in a broad range of transactions that may involve interests that differ from the Loan Parties' interests and that the Lender Parties have no obligation to disclose such interests and transactions to the Loan Parties, (e) the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent the Loan Parties have deemed appropriate in the negotiation, execution and delivery of this Agreement and the other Loan Documents, (f) each Lender Party has been, is, and will be acting solely as a principal and, except as otherwise expressly agreed in writing by it and the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties, any of their affiliates or any other Person, (g) none of the Lender Parties has any obligation to the Loan Parties

or their affiliates with respect to the transactions contemplated by this Agreement or the other Loan Documents except those obligations expressly set forth herein or therein or in any other express writing executed and delivered by such Lender Party and the Loan Parties or any such affiliate and (h) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lender Parties or among the Loan Parties and the Lender Parties.

Section 9.23 Lender Action. Notwithstanding anything to the contrary contained herein or in any other Loan Document, (i) the authority to enforce rights and remedies hereunder and under the other Security Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent for the benefit of the Lenders, (ii) no Secured Party shall have any right individually to realize upon any of the Collateral under any Security Document or to enforce the Guarantee, it being understood and agreed that all powers, rights and remedies under the Security Documents may be exercised solely by the Administrative Agent for the benefit of the Secured Parties in accordance with the terms thereof and (iii) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale, the Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and the Administrative Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold in any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent at such sale.

Section 9.24 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under Applicable Law).

Section 9.25 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

Section 9.26 Force Majeure. In no event shall the Administrative Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, it being understood that the Administrative Agent shall use reasonable best efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 9.27 Conforming Amendments.

(a) Subject to **Section 9.08(b)**, any change to this Agreement which is more restrictive on the Loan Parties or more beneficial to the Lenders, material or otherwise, that the Administrative Agent determines in its Permitted Discretion is necessary or appropriate to conform this Agreement to the terms of the ABL DIP Credit Agreement (an “**Other Facility Change**”) shall modify the terms of this Agreement pursuant to an amendment (a “**Conforming Amendment**”) to this Agreement, and, as appropriate, the other Loan Documents, executed by the Loan Parties and the Administrative Agent.

(b) Each of the parties hereto hereby agrees that, upon the effectiveness of any Conforming Amendment, this Agreement and the other Loan Documents, as applicable, will be amended to the extent necessary or appropriate to reflect the existence and terms of the Other Facility Changes evidenced thereby.

ARTICLE X

[Reserved].

ARTICLE XI

Guaranty

Section 11.01 Guaranty; Limitation of Liability.

(a) Each Guarantor, jointly and severally, hereby absolutely, unconditionally and irrevocably guarantees the performance and punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all Obligations of each other Loan Party now or hereafter existing under or in respect of the Loan Documents, whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise (such Obligations being the “**Guaranteed Obligations**”), and agrees to pay any and all reasonable out-of-pocket expenses (including reasonable out-of-pocket fees and expenses of counsel to the extent reimbursable pursuant to **Section 9.05** but excluding allocated costs of in-house counsel) incurred by the Administrative Agent in enforcing any rights under this Guaranty or any other Loan Document. Without limiting the generality of the foregoing, each Guarantor’s liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Loan Party to the Administrative Agent or any Lender under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization, winding-up or similar proceeding involving such other Loan Party.

(b) Each Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to the Administrative Agent or any Lender under this Guaranty, such Guarantor will contribute, to the maximum extent permitted by law, such amounts to each other Guarantor so as to maximize the aggregate amount paid to the Administrative Agent and the Lenders under or in respect of the Loan Documents.

Section 11.02 Guaranty Absolute. Each Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Administrative Agent or any Lender with respect thereto. The Obligations of each Guarantor under or in respect of this Guaranty are independent of the Guaranteed Obligations or any other Obligations of any other Loan Party under or in respect of the Loan Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Guaranty, irrespective of whether any action is brought against the Borrower or any other Loan Party or whether the Borrower or any other Loan Party is joined in any such action or actions. The liability of each Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any provision under this Agreement, any

Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other Obligations of any other Loan Party under or in respect of the Loan Documents, or any other amendment or waiver of or any consent to departure from any Loan Document, including any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guaranty, for all or any of the Guaranteed Obligations;

(d) any manner of application of Collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Guaranteed Obligations or any other Obligations of any Loan Party under the Loan Documents or any other assets of any Loan Party;

(e) any change, restructuring or termination of the corporate structure or existence of any Loan Party;

(f) any failure of the Administrative Agent or any Lender to disclose to any Loan Party any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party now or hereafter known to the Administrative Agent or such Lender, as the case may be (each Guarantor waiving any duty on the part of the Administrative Agent and the Lenders to disclose such information);

(g) the failure of any other Person to execute or deliver this Guaranty or the release or reduction of liability of any Guarantor or surety with respect to the Guaranteed Obligations; or

(h) any other circumstance (including any statute of limitations) or any existence of or reliance on any representation by the Administrative Agent or any Lender that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety, in its capacity as a guarantor or surety (other than payment or performance).

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Administrative Agent or any Lender or any other Person, for whatever reason, all as though such payment had not been made.

Section 11.03 Waivers and Acknowledgments.

(a) Each Guarantor hereby unconditionally and irrevocably waives (to the extent permitted by Applicable Law) any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

(b) Each Guarantor hereby unconditionally and irrevocably waives (to the extent permitted by Applicable Law) (i) any defense arising by reason of any claim or defense based

upon an election of remedies by the Administrative Agent or any Lender that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Loan Parties, any other guarantor or any other Person or any Collateral and (ii) any defense based on any right of set-off or counterclaim against or in respect of the Obligations of such Guarantor hereunder.

(c) Each Guarantor acknowledges that the Administrative Agent may, to the extent permitted by Applicable Law and the Final Order, without notice to or demand upon such Guarantor and without affecting the liability of such Guarantor under this Guaranty, foreclose under any Loan Document by non-judicial sale, and each Guarantor hereby waives (to the extent permitted by Applicable Law) any defense to the recovery by the Administrative Agent and the Lenders against such Guarantor of any deficiency after such non-judicial sale and any defense or benefits that may be afforded by Applicable Law.

(d) Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of the Administrative Agent or any Lender to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party or any of its Subsidiaries now or hereafter known by the Administrative Agent or such Lender, as the case may be.

(e) Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Loan Documents and that the waivers set forth in **Section 9.08** and this **Section 11.03** are knowingly made in contemplation of such benefits.

Section 11.04 Subrogation. Each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against the Borrower or any other Loan Party that arise from the existence, payment, performance or enforcement of such Guarantor's Obligations under or in respect of this Guaranty or any other Loan Document, including any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Administrative Agent or any Lender against the Borrower or any other Loan Party, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from the Borrower or any other Loan Party, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) shall have been paid in full in cash and the Commitments shall have expired or been terminated. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the later of (a) the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and (b) the Termination Date, such amount shall be received and held in trust for the benefit of the Administrative Agent and the Lenders, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Administrative Agent in the same form

as so received (with any necessary endorsement or assignment) to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Loan Documents, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (i) any Guarantor shall make payment to the Administrative Agent of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) shall have been paid in full in cash and (iii) the Termination Date shall have occurred, the Administrative Agent and the Lenders will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Guaranty.

Section 11.05 Continuing Guaranty; Assignments. This Guaranty is a continuing guaranty and shall (a) remain in full force and effect until the payment in full in cash of the Guaranteed Obligations (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and the termination or expiration of all Commitments, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Administrative Agent and the Lenders and their respective successors, transferees and assigns. Without limiting the generality of clause (c) of the immediately preceding sentence, any Eligible Assignee that has been assigned or transferred all or any portion of a Lender's Loans, Commitments or rights and obligations under this Agreement in accordance with **Section 9.04**, shall thereupon become vested with all the benefits granted to such transferring Lender under this Guaranty. No Guarantor shall have the right to assign its rights hereunder or any interest herein or delegate any of its duties, liabilities or obligations hereunder or under any other Loan Document without the prior written consent of the Required Lenders, except as otherwise permitted hereby.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

BORROWER:

TUESDAY MORNING, INC.

By: _____
Name: Steven R. Becker
Title: Chief Executive Officer and President

GUARANTORS:

TUESDAY MORNING CORPORATION

By: _____
Name: Steven R. Becker
Title: Chief Executive Officer and President

TMI HOLDINGS, INC.

By: _____
Name: Steven R. Becker
Title: Chief Executive Officer and President

FRIDAY MORNING, LLC

By: Tuesday Morning, Inc., as Sole Member

By: _____
Name: Steven R. Becker
Title: Chief Executive Officer and President

DAYS OF THE WEEK, INC.

By: _____
Name: Steven R. Becker
Title: Chief Executive Officer

NIGHTS OF THE WEEK, INC.

By: _____
Name: Steven R. Becker
Title: Chief Executive Officer

TUESDAY MORNING PARTNERS, LTD.

By: Days of the Week, Inc., as General Partner

By: _____

Name: Steven R. Becker

Title: Chief Executive Officer

FRANCHISE GROUP, INC.,
as Administrative Agent and a Lender

By: _____
Name:
Title:

[OTHER LENDERS],
as a Lender

By: _____
Name: _____
Title: _____