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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

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**FORM 8-K**

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

Date of Report (Date of earliest event reported): November 21, 2017 (November 20, 2017)

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**GameStop Corp.**

(Exact name of Registrant as specified in its charter)

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**Delaware**

**1-32637**

**20-2733559**

(State or Other Jurisdiction  
of Incorporation or Organization)

(Commission  
File Number)

(I.R.S. Employer  
Identification No.)

**625 Westport Parkway, Grapevine, TX 76051  
(817) 424-2000**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

**Not Applicable**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 under the Securities Act (17 CFR 230.405) or Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2).

Emerging growth company

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

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### Item 1.01 Entry into a Material Definitive Agreement.

On November 20, 2017, we entered into a Second Amendment (the “Amendment”) to the Second Amended and Restated Credit Agreement, dated as of March 25, 2014, among the Company, as Lead Borrower, certain of the Company’s subsidiaries named therein as borrowers, certain banks and financial institutions named therein, as Lenders, and Bank of America, N.A., as Agent for the Lenders (the “Revolver”, and as amended by the Amendment, the “Amended Revolver”). The Amendment increases the amount which may be borrowed under the Revolver to \$420 million and extends the maturity date from March 2019 to November 2022. The Amended Revolver maintains the existing \$200 million accordion feature and allows for an incremental \$50 million first-in, last-out facility. The applicable margins for prime rate loans are reduced from a range of 0.25% to 0.75% to a range of 0.25% to 0.50% and, for London Interbank Offered Rate loans, reduced from a range of 1.25% to 1.75% to a range of 1.25% to 1.50%. Other terms and covenants under the Amended Revolver remain substantially unchanged.

In connection with the Amendment, the Company and the subsidiary borrowers also entered into a Third Amended and Restated Security Agreement and a First Amendment to Second Amended and Restated Intellectual Property Security Agreement. The mortgage previously granted by GameStop Texas LP was released.

The foregoing description of each of the Amendment, the Security Agreement Amendment and the Patent Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of each agreement, which are filed, respectively, as Exhibit 10.1, Exhibit 10.2, and Exhibit 10.3 hereto, and incorporated herein by reference.

### Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off- Balance Sheet Arrangement of a Registrant.

(a) The disclosure provided under Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03(a) as if fully set forth herein.

### Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
10.1	<a href="#"><u>Second Amendment to Second Amended and Restated Credit Agreement, dated as of November 20, 2017, by and among GameStop Corp., certain subsidiaries of GameStop Corp., Bank of America, N.A. and the other lending institutions listed therein, Bank of America, N.A., as Issuing Bank, Bank of America, N.A., as Agent, JPMorgan Chase Bank, N.A., as Syndication Agent and Wells Fargo Bank, National Association, U.S. Bank National Association and Regions Bank as Co-Documentation Agents.</u></a>
10.2	<a href="#"><u>Third Amended and Restated Security Agreement, dated as of November 20, 2017.</u></a>
10.3	<a href="#"><u>First Amendment to Second Amended and Restated Patent and Trademark Security Agreement, dated as of November 20, 2017.</u></a>

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**GAMESTOP CORP.**

\_\_\_\_\_  
(Registrant)

Date: November 21, 2017

By: /s/ ROBERT A. LLOYD

Name: Robert A. Lloyd

Title: Executive Vice President and Chief Financial Officer

## EXHIBIT INDEX

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10.2	<a href="#"><u>Third Amended and Restated Security Agreement, dated as of November 20, 2017.</u></a>
10.3	<a href="#"><u>First Amendment to Second Amended and Restated Patent and Trademark Security Agreement, dated as of November 20, 2017.</u></a>

## SECOND AMENDMENT TO SECOND AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of November 20, 2017

This SECOND AMENDMENT TO SECOND AMENDED AND RESTATED CREDIT AGREEMENT (this "Amendment") is by and among GAMESTOP CORP., a Delaware corporation (the "Lead Borrower"), the other Borrowers party hereto, the Lenders party hereto, and BANK OF AMERICA, N.A., as administrative agent and collateral agent for the Lenders (in such capacities, the "Agent").

## PRELIMINARY STATEMENTS

WHEREAS, the Borrowers, the Lenders and the Agent entered into that certain Second Amended and Restated Credit Agreement, dated as of March 25, 2014 (as amended pursuant to that certain First Amendment to Second Amended and Restated Credit Agreement, dated as of September 15, 2014, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"); and

WHEREAS, the Borrowers have requested that the Agent and the Lenders agree to amend the Credit Agreement as specifically set forth herein and, subject to the terms of this Amendment, the Agent and the Lenders have agreed to grant such request.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Capitalized Terms. All capitalized terms not otherwise defined in this Amendment (including without limitation in the introductory paragraph and the Preliminary Statements hereto) shall have the meanings as specified in the Credit Agreement.

Section 2. Amendments to Credit Agreement.

- (a) Composite Credit Agreement. The Credit Agreement is hereby amended to delete the bold, stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold, double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Annex A hereto.
- (b) Schedules and Exhibits to Credit Agreement. The Schedules and Exhibits to the Credit Agreement are hereby deleted in their entirety and the Schedules and Exhibits attached to Annex A hereto are substituted in their stead.

Section 3. Conditions of Effectiveness. The effectiveness of the amendments in Section 2 shall be subject to the satisfaction of each of the following conditions precedent:

- (a) This Amendment and all documents described on Exhibit A hereto shall have been duly executed and delivered by the Borrowers and the Lenders party thereto and shall be in form and substance satisfactory to the Agent;

(b) The Agent shall have received, in form and substance reasonably satisfactory to the Agent and duly executed by the Borrowers, a Note in favor of each Lender requesting a Note and reflecting the Commitment of such Lender after giving effect to this Amendment;

(c) The Agent shall be satisfied with the results of lien searches with respect to the Borrowers and all filings, recordations and searches necessary or desirable (as reasonably determined by the Agent) to reflect the valid and perfected liens and security interests of the Agent shall have been duly made and all filing and recording fees and taxes shall have been duly paid;

(d) The Agent shall have received satisfactory opinions of Pepper Hamilton LLP and appropriate local counsel, addressed to the Agent and each Lender, as to such matters concerning the Borrowers, this Amendment and the other Loan Documents as the Agent may reasonably request (which shall cover, among other things, authority, legality, validity, binding effect and enforceability of this Amendment);

(e) The Agent shall have received such documents and certificates as the Agent or its counsel may reasonably request relating to the organization, existence and good standing of each member of the Borrower Affiliated Group, the authorization of the transactions contemplated by the Loan Documents and any other legal matters relating to the Borrower Affiliated Group, the Loan Documents or the transactions contemplated thereby, all in form and substance reasonably satisfactory to the Agent and its counsel;

(f) No event shall have occurred that could reasonably be expected to have a Material Adverse Effect;

(g) The Agent shall have received and be satisfied with updated projections of the Borrowers in form and substance reasonably satisfactory to the Agent;

(h) After giving effect to the consummation of the transactions contemplated on the Second Amendment Effective Date and the Credit Extensions made on the Second Amendment Effective Date, Excess Availability shall not be less than \$150,000,000;

(i) The Agent shall have received a Borrowing Base Certificate dated as of November 13, 2017 and executed by a Financial Officer of the Lead Borrower;

(j) The Borrowers shall have (i) paid all fees then due to the Agent, Arrangers and the Lenders, (ii) reimbursed the Agent for all costs and expenses, including, reasonable appraisers, auditors, and attorneys' fees, and (iii) shall have paid all fees in accordance with the terms of the Fee Letters;

(k) The representations and warranties of the Borrowers contained in Section 4 shall be true and correct; and

(l) The Agent shall have received such additional documents, instruments, and agreements as the Agent may reasonably request in connection with the transactions contemplated hereby.

Section 4. Representations and Warranties of the Borrowers. Each Borrower represents and warrants as follows:

(a) The consummation of the transactions contemplated hereby shall not (a) violate any Applicable Law, or (b) conflict with, or result in a default or event of default under, any material agreement of Borrowers or any other member of the Borrower Affiliated Group, taken as a whole (and the Agent and the Lenders shall receive a satisfactory opinion of Borrowers' counsel to that effect). No event shall exist

which is, or solely with the passage of time, the giving of notice or both, would be a default under any material agreement of any member of the Borrower Affiliated Group.

(b) All necessary consents and approvals to the transactions contemplated hereby shall have been obtained and shall be reasonably satisfactory to the Agent, including, without limitation, consents from all requisite material Governmental Authorities and except as would not reasonably be expected to have or result in a Material Adverse Effect.

(c) There are no actions, suits, investigations, or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any member of the Borrower Affiliated Group, threatened against or affecting any such Person (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve any of the Loan Documents.

(d) After giving effect to this Amendment, the representations and warranties contained in each of the Loan Documents are true and correct in all material respects on and as of the date hereof as though made on and as of such date, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and (ii) in the case of any representation and warranty qualified by materiality, they are true and correct in all respects.

(e) No Default or Event of Default shall exist after giving effect to this Amendment.

Section 5. Reference to and Effect on the Loan Documents. On and after the effectiveness of this Amendment, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Credit Agreement, and each reference in each of the other Loan Documents to “the Credit Agreement”, “thereunder”, “thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement, as amended by this Amendment, and this Amendment shall constitute a Loan Document.

(a) The Credit Agreement and each of the other Loan Documents, as specifically amended by this Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed. Without limiting the generality of the foregoing, the Security Documents and all of the Collateral described therein do and shall continue to secure the payment of all Obligations of the Borrowers under the Loan Documents, in each case as amended by this Amendment.

(b) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Agent under any of the Loan Documents, nor constitute a waiver of any other provision of any of the Loan Documents.

Section 6. Reaffirmations. Each Borrower (a) consents to this Amendment and agrees that the transactions contemplated by this Amendment shall not limit or diminish the obligations of such Person, or release such Person from any obligations, under any of the Loan Documents to which it is a party, (b) confirms and reaffirms its obligations under each of the Loan Documents to which it is a party and all representations, warranties, and covenants contained therein, and (c) agrees that each of the Loan Documents to which it is a party remains in full force and effect and is hereby ratified and confirmed.

Section 7. Execution in Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a

signature page of this Agreement by telecopy, pdf or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 8. Governing Law. This Amendment shall be governed by, and construed in accordance with, the law of the State of New York.

Section 9. Entire Agreement. This Amendment and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Agent, the Issuing Bank and/or the Arrangers, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous letters of intent, commitment letters, agreements and understandings, oral or written, relating to the subject matter hereof.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**BORROWERS:**

**GAMESTOP CORP.**  
**GAMESTOP, INC.**  
**SUNRISE PUBLICATIONS, INC.**  
**ELBO INC.**  
**EB INTERNATIONAL HOLDINGS, INC.**  
**GAMESTOP TEXAS LTD.**  
**SIMPLY MAC, INC.**  
**SPRING COMMUNICATIONS HOLDING, INC.**  
**GS MOBILE, INC.**  
**GEEKNET, INC.**  
**SOCOM LLC**

By: /s/ ROBERT A. LLOYD  
Name: Robert A. Lloyd  
Title: Chief Financial Officer

**MARKETING CONTROL SERVICES, INC.**

By: /s/ MIKE LOFTUS  
Name: Mike Loftus  
Title: President

**BANK OF AMERICA, N.A.**, as Agent, Issuing Bank,  
and as a Lender

By:           /s/ ANDREW CERUSSI          

Name: Andrew Cerussi

Its Authorized Signatory

GameStop Corp.  
Second Amendment to Second Amended and Restated Credit Agreement  
Signature Page

**JPMorgan Chase Bank, N.A., as a Lender**

By: /s/ JENNIFER HEARD

Name: Jennifer Heard

Title: Authorized Officer

GameStop Corp.  
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**Regions Bank.,** as a Lender

By: /s/ DANIEL WELLS

Name: Daniel Wells

Title: Director

GameStop Corp.  
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**U.S. BANK NATIONAL ASSOCIATION**, as a Lender

By: /s/ JOHN R. LEPAGE

Name: John R. LePage

Title: Vice President

GameStop Corp.  
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Signature Page

**Wells Fargo Bank, National Association**, as a Lender

By: /s/ ROBERT C. CHAKARIAN

Name: Robert C. Charkarian

Title: Vice President

GameStop Corp.  
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**Fifth Third Bank**, as a Lender

By: /s/ BRUCE ROBERT COHENOUR, JR.  
Name: Bruce Robert Cohenour, Jr.  
Title: Assistant Vice President

GameStop Corp.  
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**HSBC Bank USA, N.A., as a Lender**

By: /s/ MICHAEL BUSTIOS

Name: Michael Bustios

Title: Vice President, 20556

GameStop Corp.  
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**SUNTRUST BANK**, as a Lender

By: /s/ SETH MEIER

Name: Seth Meier

Title: Director

GameStop Corp.  
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Signature Page

Annex A

Composite Credit Agreement

[see attached]

GameStop Corp.  
Second Amendment to Second Amended and Restated Credit Agreement  
Annex A

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

dated as of  
March 25, 2014,  
as amended on September 15, 2014,  
as further amended on November 20, 2017

among

GAMESTOP CORP.,  
as Lead Borrower for:

GAMESTOP CORP.  
GAMESTOP, INC.  
SUNRISE PUBLICATIONS, INC.  
ELBO INC.  
EB INTERNATIONAL HOLDINGS, INC.  
~~[KONGREGATE INC.]~~  
GAMESTOP TEXAS LTD.  
MARKETING CONTROL SERVICES, INC.  
SOCOM LLC  
~~[SPAWN LABS, INC.]~~  
SIMPLY MAC, INC.  
SPRING COMMUNICATIONS HOLDING, INC.  
GS MOBILE, INC.  
GEEKNET, INC.

The LENDERS Party Hereto,

BANK OF AMERICA, N.A.  
as Issuing Bank,

BANK OF AMERICA, N.A.  
as Agent,  
JPMORGAN CHASE BANK, N.A.[:]  
as Syndication Agent

WELLS FARGO BANK, NATIONAL ASSOCIATION  
U.S. BANK NATIONAL ASSOCIATION  
and  
REGIONS BANK[:]  
as Co-Documentation Agents,

and

JPMORGAN CHASE BANK, N.A.



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EXHIBITS

**EXHIBITS**

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~~[B-1—Revolving Note]~~

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~~[C—Opinion of Counsel to Borrowers]~~

~~[D—Borrowing Base Certificate]~~

~~[E—Compliance Certificate]~~

<u>A</u>	<u>Assignment and Acceptance</u>
<u>B-1</u>	<u>Revolving Note</u>
<u>B-2</u>	<u>Swingline Note</u>
<u>C</u>	<u>Opinion of Counsel to Borrowers</u>
<u>D</u>	<u>Borrowing Base Certificate</u>
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- ~~[2.21(c) — Blocked Account Agreements]~~
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This SECOND AMENDED AND RESTATED CREDIT AGREEMENT is dated as of March 25, 2014, [as amended on September 15, 2014, and as further amended on November 20, 2017](#), among GAMESTOP CORP., a corporation organized under the laws of the State of Delaware having a place of business at 625 Westport Parkway, Grapevine, Texas 76051, as Lead Borrower; the Subsidiary Borrowers party hereto; the Lenders party hereto; BANK OF AMERICA, N.A., a national banking association having a place of business at 100 Federal Street, Boston, Massachusetts 02110, as administrative agent and collateral agent for the Credit Parties (in such capacities, the “Agent”); JPMORGAN CHASE BANK, N.A., as Syndication Agent; and WELLS FARGO BANK, NATIONAL ASSOCIATION, U.S. BANK NATIONAL ASSOCIATION and REGIONS BANK, as Co-Documentation Agents.

WITNESSETH:

WHEREAS, the Lead Borrower and certain of the other Borrowers, among others, have entered into that certain Amended and Restated Credit Agreement, dated as of January 4, 2011 (as amended and in effect on and prior to the date hereof, the “Existing Credit Agreement”) by, among others, the Lead Borrower and such other Borrowers, the “Lenders” as defined therein, Bank of America, N.A. as “Administrative Agent” and “Collateral Agent”, Wells Fargo Capital Finance, LLC, as “Syndication Agent”, and U.S. Bank National Association and Regions Bank, as “Co-Documentation Agents”; and

WHEREAS, in accordance with Section ~~[9.2]~~9.2 of the Existing Credit Agreement, the Borrowers, the Lenders and the Agent desire to amend and restate the Existing Credit Agreement as provided herein.

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

1. DEFINITIONS.

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

[“2019 Senior Notes” means the Senior 5.5% Rate Notes Due 2019 issued by GameStop Corp. under an Indenture dated as of September 24, 2014 with U.S. Bank National Association, as Trustee.](#)

[“2021 Senior Notes” means the Senior 6.75% Rate Notes Due 2021 issued by GameStop Corp. under an Indenture dated as of March 9, 2016 with U.S. Bank National Association, as Trustee.](#)

“ACH” shall mean automated clearing house transfers.

“Accelerated Borrowing Base Delivery Event” means either (i) the occurrence and continuance of any Event of Default, or (ii) the failure of the Borrowers to maintain Excess Availability at least equal to the greater of (x) \$40,000,000 and (y) twelve and one-half percent (12.5%) of the Loan Cap. For purposes of this Agreement, the occurrence of an Accelerated Borrowing Base Delivery Event shall be deemed continuing at the Agent<sup>[2]</sup>’s option (i) if an Event of Default has occurred, so long as such Event of Default has not been waived, and~~/or~~ (ii) if the Accelerated Borrowing Base Delivery Event arises as a result of the Borrowers<sup>[2]</sup>’ failure to achieve Excess Availability as required hereunder, until Excess Availability is at least twelve and one-half percent (12.5%) of the Loan Cap for ~~forty-five (45)~~thirty (30) consecutive calendar days, in which case an Accelerated Borrowing Base Delivery Event shall no longer be deemed to be continuing for purposes of this Agreement.

“Accommodation Payment” has the meaning provided in Section ~~[9]9.14.[14.]~~

“Accounts” shall mean “accounts” as defined in the UCC, and also all accounts, accounts receivable, and rights to payment (whether or not earned by performance) for: (i) property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; (ii) services rendered or to be rendered; (iii) a policy of insurance issued or to be issued; (iv) a secondary obligation incurred or to be incurred; or (v) arising out of the use of a credit or charge card or information contained on or used with that card.

“Additional Commitment Lenders” shall have the meaning given to such term in Section ~~[2]2.29(c).[29(e).]~~

“Adjusted LIBOR Rate” means, with respect to any LIBOR Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of one percent (1%)) equal to (a) the LIBOR Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate. The Adjusted LIBOR Rate will be adjusted automatically as to all LIBOR Borrowings then outstanding as of the effective date of any change in the Statutory Reserve Rate.

“Adjustment Date” means the first day of each fiscal quarter of the Borrowers, commencing ~~[June 1]~~February 4, 201~~[4]~~8.

“Affiliate” means, with respect to a specified Person, (i) any director or officer of that Person, (ii) any other Person Controlling, Controlled by or under direct or indirect common Control with that Person (and if that Person is an individual, any member of the immediate family (including parents, siblings, spouse, children, stepchildren, nephews, nieces and grandchildren) of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is Controlled by any such member or trust), (iii) any other Person directly or indirectly holding 10% or more of any class of the ~~[capital stock or other equity interests (including options, warrants, convertible securities and similar rights)]~~Equity Interests of that Person, (iv) any other Person 10% or more of any class of whose ~~[capital stock or other equity interests (including options, warrants, convertible securities and similar rights)]~~Equity Interests is held directly or indirectly by that Person, and (v) any other Person that possesses, directly or indirectly, power to direct or cause the direction of

management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise) of that Person.

“Agent” means Bank of America, in its capacity as administrative agent and collateral agent for the Credit Parties hereunder.

“Agreement” means this Second Amended and Restated Credit Agreement, as modified, amended, supplemented or restated, and in effect from time to time.

“Allocable Amount” has the meaning provided in Section ~~9~~9.14.~~[14.]~~

“Applicable Law” means as to any Person: (i) all statutes, rules, regulations, orders, or other requirements having the force of law and (ii) all court orders and injunctions, and/or similar rulings, in each instance ((i) and (ii)) of or by any Governmental Authority, or court, or tribunal which are applicable to such Person, or any property of such Person.

“Applicable Margin” means:

(a) From and after the Second Amendment Effective Date until the first Adjustment Date, the percentages set forth in Level ~~H~~I of the pricing grid below; and

(b) From and after the first Adjustment Date and on each Adjustment Date thereafter, the Applicable Margin shall be determined from the following pricing grid based upon the Average Daily Excess Availability as of the fiscal quarter of the Borrowers ended immediately preceding such Adjustment Date; provided however that notwithstanding anything to the contrary set forth herein, upon the occurrence of an Event of Default, the Agent may, and at the direction of the Required Lenders shall, immediately increase the Applicable Margin to that set forth in Level I (even if the Average Daily Excess Availability requirements for a different Level have been met) and interest shall accrue at the Default Rate; provided further if any Borrowing Base Certificates are at any time restated or otherwise revised (including as a result of an audit) or if the information set forth in any Borrowing Base Certificates otherwise proves to be false or incorrect such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest due under this Agreement shall be immediately recalculated at such higher rate for any applicable periods and shall be due and payable on demand.

Level	Average Daily Excess Availability	<u>LIBOR Loans</u>	Prime Rate Loans	<del>LIBO Loans</del>
I	Less than <del>33</del> <u>50</u> % of the Loan Cap	<u>1.50%</u>	0. <del>7</del> <u>50</u> %	<del>1.75%</del>
II	Equal to or greater than <del>33% of the Loan Cap but less than 66</del> <u>50</u> % of the Loan Cap	<u>1.25%</u>	0.25 <del>0</del> %	<del>1.50%</del>

	[III]	[Equal to or greater than 66% of the Loan Cap]	[0.25%]	[1.25%]
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“Appraised Value” means the net appraised liquidation value of the Borrowers<sup>[2]</sup> Inventory as set forth in the Borrowers<sup>[2]</sup> inventory stock ledger (expressed as a percentage of the Cost of such Inventory) as determined from time to time by the Agent with the assistance of an independent appraiser satisfactory to the Agent.

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

“Arrangers” means each of Merrill Lynch, Pierce, Fenner & Smith Incorporated<sup>[7]</sup> (“MLPFS”) and JPMorgan Chase Bank, N.A. in their respective capacities as joint lead arranger and joint bookrunner.

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 9.5), and accepted by the Agent, in the form of Exhibit A or any other form approved by the Agent.

“Availability Reserves” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Agent from time to time determines in the Agent<sup>[2]</sup>’s Permitted Discretion (after consultation with the Lead Borrower (whose consent to any Availability Reserve shall not be required)) as being appropriate (a) to reflect the impediments to the Agent<sup>[2]</sup>’s ability to realize upon the Collateral, (b) to reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or the assets, business, financial performance or financial condition of any Borrower or Facility Guarantor, or (d) to reflect that a Default or an Event of Default then exists. Without limiting the generality of the foregoing, Availability Reserves may include (but are not limited to) reserves based on (i) rent; (ii) Customer Credit Liabilities; (iii) customs, duties, and other costs to release Inventory which is being imported into the United States; (iv) outstanding taxes and other governmental charges, including, ad valorem, real estate, personal property, and other taxes which might have priority over the interests of the Agent in the Collateral; (v) salaries, wages and benefits due to employees of any Borrower; (vi) customer deposits<sup>[7]</sup>; (vii) reserves for reasonably anticipated changes in the Appraised Value of Eligible Inventory between appraisals; (viii) reserves with respect to any cash management, Hedging Agreement or other banking or financial services provided by any Lender, the Agent, ~~the~~any Arranger or any of their respective Affiliates<sup>[7]</sup> ~~and~~; (ix) warehousemen<sup>[2]</sup>’s or bailee<sup>[2]</sup>’s charges and other Permitted Encumbrances which may have priority over the interests of the Agent in the Collateral; and (x) the Debt Maturity Reserve. Availability Reserves shall be established and calculated in a manner and methodology consistent

with the Agent<sup>[2]</sup>'s practices as of the [Second Amendment](#) Effective Date with other similarly situated borrowers.

“[Average Daily Excess Availability](#)” shall mean the average daily Excess Availability for the immediately preceding fiscal quarter of the Borrowers.

“[Bail-In Action](#)” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

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

“[Banker<sup>\[2\]</sup>'s Acceptance](#)” means a time draft or bill of exchange or other deferred payment obligation relating to a Commercial Letter of Credit which has been accepted by the Issuing Bank.

“[Bank of America](#)” shall mean Bank of America, N.A., a national banking association.

“[Bank of America Concentration Account](#)” has the meaning provided therefor in Section 2.21(d).

“[Bank Products](#)” means any services ~~[of]~~or facilities provided to ~~[any Borrower]~~or for the benefit of any Borrower or any other member of the Borrower Affiliated Group (to the extent such other member of the Borrower Affiliated Group's obligations thereunder are guaranteed by any Borrower) by the Agent, any Lender or any of their respective Affiliates, including, without limitation, on account of (a) Hedging Agreements, (b) purchase cards, (c) supply chain financing and (d) leasing, but excluding Cash Management Services.

“[Bankruptcy Code](#)” means Title 11, U.S.C., as now or hereafter in effect, or any successor thereto.

“[Blocked Account Agreements](#)” shall mean agency agreements with respect to an account established by a Borrower, in form and substance satisfactory to the Agent, establishing control (as defined in the UCC) of such account by the Agent and whereby the bank maintaining such account agrees, upon the occurrence and during the continuance of a Cash Dominion Event, to comply only with the instructions originated by the Agent without the further consent of any Borrower.

“[Blocked Account Banks](#)” shall mean each bank with whom deposit accounts are maintained in which any funds of any of the Borrowers from one or more DDAs are concentrated and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

“Blocked Accounts” shall mean each deposit account of the Borrowers which is the subject of a Blocked Account Agreement, excluding any Specified Account.

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

“Borrowers” means, individually and collectively, GameStop Corp., the Subsidiary Borrowers, and any other Person who becomes a Borrower hereunder.

“Borrower Affiliated Group” shall mean, collectively, (i) the Borrowers and (ii) each of the direct or indirect Subsidiaries of the Borrowers in existence from time to time~~[- including, without limitation, GameStop Europe Holdings S.a.r.l. and its Subsidiaries.].~~

“Borrowing” shall mean the incurrence of Loans of a single Type, on a single date and having, in the case of LIBOR Loans, a single Interest Period, or (b) a Swingline Loan.

“Borrowing Base” means, at any time of calculation, an amount equal to:

(a) the Cost of Eligible Inventory, net of Inventory Reserves, multiplied by the Inventory Advance Rate, multiplied by the Appraised Value of Eligible Inventory; plus

(b) ninety [~~(90%)~~] percent (90%) multiplied by the then Eligible Credit Card Receivables; minus

(c) the then amount of all Availability Reserves.

“Borrowing Base Certificate” has the meaning assigned to such term in Section 5.1(f).

“Borrowing Request” means a request by the Lead Borrower on behalf of the Borrowers for a Borrowing in accordance with Section 2.3.

“Breakage Costs” shall have the meaning set forth in Section 2.19(b).

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

“Capital Expenditures” of any Person means, for any period, to the extent capitalized in accordance with GAAP, any expenditure for fixed assets (both tangible and intangible), including assets being constructed (whether or not completed), leasehold improvements, capital leases under GAAP, installment purchases of machinery and equipment, acquisitions of real estate and other similar expenditures including (i) in the case of a purchase, the entire purchase price, whether or not paid during the fiscal period in question, (ii) in the case of any Capitalized Lease Obligation, the capitalized amount thereof (determined in accordance with GAAP) and (iii) without duplication, expenditures in or from any construction-in-progress account of any member

of the Borrower Affiliated Group, provided, however, that expenditures for a Permitted Acquisition or Permitted Foreign Acquisition shall not constitute Capital Expenditures.

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

“Cash Collateral Account” shall mean an interest-bearing account established by the Borrowers with the Agent at Bank of America under the sole and exclusive dominion and control of the Agent designated as the “GameStop Corp. Cash Collateral Account”.

“Cash Dominion Event” means either (i) the occurrence and continuance of any Event of Default, or (ii) the failure of the Borrowers to maintain Excess Availability at least equal to the greater of (x) \$40,000,000 or (y) twelve and one-half [~~(12.5%)~~] percent (12.5%) of the Loan Cap. For purposes of this Agreement, the occurrence of a Cash Dominion Event shall be deemed continuing at the Agent<sup>[2]</sup>'s option (i) if an Event of Default has occurred, so long as such Event of Default has not been waived, and~~[or]~~ (ii) if the Cash Dominion Event arises as a result of the Borrowers<sup>[2]</sup>' failure to achieve Excess Availability as required hereunder, until Excess Availability exceeds the greater of (x) \$40,000,000 or (y) twelve and one-half [~~(12.5%)~~] percent (12.5%) of the Loan Cap for [~~forty-five (45)~~thirty (30)] consecutive days, in which case a Cash Dominion Event shall no longer be deemed to be continuing for purposes of this Agreement; provided that a Cash Dominion Event shall be deemed continuing (even if Excess Availability exceeds the required amounts for [~~forty-five (45)~~thirty (30)] consecutive days or such Event of Default has been waived) (i) for any twelve month period if a Cash Dominion Event has previously occurred and been discontinued one time during such twelve month period and (ii) at all times if a Cash Dominion Event has previously occurred and been discontinued four times since the Effective Date. The termination of a Cash Dominion Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Cash Dominion Event in the event that the conditions set forth in this definition again arise.

“Cash Management Services” means any one or more of the following types or services or facilities provided to any Borrower by the Agent or any Lender or any of their respective Affiliates: (a) ACH transactions, (b) cash management services, including, without limitation, controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) foreign exchange facilities, (d) credit card processing services, and (e) credit or debit cards.

“Cash Receipts” has the meaning provided therefor in Section 2.21(d).

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

“Change in Control” means, at any time, (~~a[ ] occupation of a majority of the seats (other than vacant seats) on the board of directors of the Lead Borrower by Persons who were neither (i) nominated by the board of directors of the Lead Borrower nor (ii) appointed by directors so~~

~~nominated; or (b)~~) any person (within the meaning of the Securities and Exchange Act of 1934, as amended), is or becomes the beneficial owner (within the meaning of Rule 13d-3 and 13d-5 of the Securities and Exchange Act of 1934, as amended) directly or indirectly of forty percent (40%) or more of the total voting power of the Voting Stock of the Lead Borrower on a fully diluted basis, whether as a result of the issuance of securities of the Lead Borrower, any merger, consolidation, sale, or distribution, or otherwise, or (e)b) except as otherwise permitted pursuant to this Agreement, the failure of the Lead Borrower to own, directly or indirectly, 100% (or such other percentage as may be owned directly or indirectly but in no event less than that percentage so owned as of the date of acquisition or creation thereof) of the ~~capital stock or ownership interest, as applicable;~~ Equity Interests of all members of the Borrower Affiliated Group.

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement (or, in the case of any Person which becomes a Lender or Participant thereafter, the date on which such Person becomes a Lender or Participant), (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Effective Date (or, in the case of any Person which becomes a Lender or Participant thereafter, the date on which such Person becomes a Lender or Participant) or (c) compliance by any Lender or the Issuing Banks (or, for purposes of Section 2.23, by any lending office of such Lender or by such Lender<sup>[2]</sup>'s or any Issuing Bank<sup>[2]</sup>'s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Effective Date (or, in the case of any Person which becomes a Lender or Participant thereafter, the date on which such Person becomes a Lender or Participant); provided however, for purposes of this Agreement, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Charges” has the meaning provided therefor in Section 9.13.

“Code” means the Internal Revenue Code of 1986 ~~and the rules and regulations promulgated thereunder~~, as amended from time to time.

“Collateral” means any and all “Collateral” ~~or “Mortgaged Property”~~ as defined in any applicable Security Document; provided, in no event shall “Collateral” include (or be required to include) the Excluded Property (as defined in the Security Agreement).

“Collateral Access Agreement” means an agreement reasonably satisfactory in form and substance to the Agent executed by (a) a bailee or other Person in possession of Collateral, or (b) any landlord of Real Estate leased by any Borrower, pursuant to which such Person (i) acknowledges the Agent<sup>[2]</sup>'s Lien on the Collateral, (ii) releases or subordinates such Person<sup>[2]</sup>'s Liens in the Collateral held by such Person or located on such Real Estate, (iii) provides the Agent with access to the Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Agent with a reasonable time to sell and dispose

of the Collateral from such Real Estate, and (v) makes such other agreements with the Agent as the Agent may reasonably require.

“Commercial Letter of Credit” means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by a Borrower in the ordinary course of business of such Borrower.

“Commitment” shall mean, with respect to each Lender, the commitment of such Lender hereunder in the amount set forth opposite its name on Schedule 1.1 hereto or as may subsequently be set forth in the Register from time to time, as the same may be increased pursuant to ~~[Section 2.29]~~ Sections 2.29 and 2.30 hereof or reduced from time to time pursuant to Section 2.15 hereof.

“Commitment Increase” shall have the meaning provided in Section ~~[2]2.29(a).~~~~[29(a)].~~

“Commitment Fee” has the meaning provided therefor in Section 2.12.

“Commitment Percentage” shall mean, with respect to each Lender, that percentage of the Commitments of all Lenders hereunder in the amount set forth opposite its name on Schedule 1.1 hereto or as may subsequently be set forth in the Register from time to time, as the same may be increased pursuant to ~~[Section 2.29]~~ Sections 2.29 and 2.30 hereof or reduced from time to time pursuant to Section 2.15 hereof.

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

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

“Consolidated EBITDA” of the Borrower Affiliated Group (excluding any Subsidiaries which are not Domestic Subsidiaries Controlled by the Borrowers) means, for any twelve month period, the result for such period of (i) Consolidated Net Income, plus (ii) depreciation, amortization and all other non-cash charges that were deducted in the calculation of Consolidated Net Income for such period plus (iii) provisions for income taxes that were deducted in the calculation of Consolidated Net Income for such period, plus (iv) Consolidated Interest Expense, plus (v) extraordinary non-cash losses to the extent such losses have not been and will not become cash losses in a later fiscal period, plus (vi) one-time transaction fees, costs and expenses incurred in connection with any issuances of Equity Interests, Investments, Acquisitions, dispositions, mergers and other reorganizations, or the incurrence, refinancing, or modification of Indebtedness or similar transactions, in each case to the extent permitted hereunder; plus (vii) costs, charges, accruals, reserves or expenses attributable to the undertaking and/or implementation of reorganizations, cost savings initiatives, operating expense reductions and similar initiatives, plus (viii) extraordinary, non-recurring or unusual cash items. Each calculation of Consolidated EBITDA under this Agreement shall be made for the twelve -month period ending on the date of such calculation; provided that amounts added back pursuant to clauses (vii) and (viii) shall not exceed fifteen percent

(15%) of Consolidated EBITDA for such period calculated after giving effect to the add-backs set forth in clauses (vii) and (viii) and being calculated on a pro forma basis.

“Consolidated Interest Expense” means, for any period for the Borrower Affiliated Group (excluding any Subsidiaries which are not Domestic Subsidiaries Controlled by the Borrowers), total interest and all amortization of debt discount and expense (including that attributable to Capital Lease Obligations in accordance with GAAP) of the Borrower Affiliated Group (excluding any Subsidiaries which are not Domestic Subsidiaries Controlled by the Borrowers) on a Consolidated basis with respect to all outstanding Indebtedness of the Borrower Affiliated Group (excluding any Subsidiaries which are not Domestic Subsidiaries Controlled by the Borrowers), including, without limitation, all commitment fees, fees and charges owed with respect to letters of credit, balance deficiency fees and similar expenses, and bankers<sup>[2]</sup> acceptance financing and net costs under Hedging Agreements, but excluding any non-cash or deferred interest financing costs.

“Consolidated Net Income” means, for any period with respect to the Borrower Affiliated Group (excluding any Subsidiaries which are not Domestic Subsidiaries Controlled by the Borrowers), the net income (or loss) of the Borrower Affiliated Group (excluding any Subsidiaries which are not Domestic Subsidiaries Controlled by the Borrowers) on a Consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, provided that there shall be excluded (i) the income (or loss) of any Person in which any other Person (other than the Lead Borrower or any of its Domestic Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to the Lead Borrower or any of its Domestic Subsidiaries by such Person during such period, (ii) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Lead Borrower or any of its Domestic Subsidiaries or is merged into or consolidated with the Lead Borrower or any of its Domestic Subsidiaries or that Person<sup>[2]</sup>’s assets are acquired by the Lead Borrower or any of its Domestic Subsidiaries, and (iii) the income (or loss) of any Subsidiaries other than Domestic Subsidiaries Controlled by the Borrower.

“Consolidated Net Worth” means, with respect to the Borrower Affiliated Group (excluding any Subsidiaries which are not Domestic Subsidiaries Controlled by the Borrowers), the difference between its Consolidated total assets and its Consolidated total liabilities, all as determined in accordance with GAAP.

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

“Controlled Foreign Corporation” means any entity that is a “controlled foreign corporation” under Section 957 of the Code.

“Cost” means the cost value of Inventory as reported on the Borrowers<sup>[2]</sup> inventory stock ledger using the average cost method of accounting based on practices which are in effect on the date of this Agreement. “Cost” does not include inventory capitalization costs or other

non-purchase price charges (other than in-bound freight) used in the Borrowers<sup>[2]</sup> calculation of cost of goods sold.

“Covenant Compliance Event” means either (a) that an Event of Default has occurred and is continuing, or (b) Excess Availability is less than the greater of (x) \$30,000,000 or (y) ten percent (10%) of the Loan Cap. For purposes hereof, the occurrence of a Covenant Compliance Event shall be deemed continuing at the Agent<sup>[2]</sup>'s option (i) if an Event of Default has occurred, so long as such Event of Default has not been waived, and~~[for]~~ (ii) if the Covenant Compliance Event arises as a result of the Borrowers<sup>[2]</sup> failure to achieve Excess Availability as required hereunder, until Excess Availability has exceeded ~~[twelve and one-half (12.5%)]~~ greater of (x) \$30,000,000 or (y) ten percent (10%) of the Loan Cap for ~~[ninety]thirty~~ (9)30 consecutive days, in which case a Covenant Compliance Event shall no longer be deemed to be continuing for purposes of this Agreement~~;~~ ~~provided that a Covenant Compliance Event shall be deemed continuing (even if an Event of Default is no longer continuing and/or Excess Availability exceeds the required amount for ninety (90) consecutive days) at all times after a Covenant Compliance Event has occurred and been discontinued on five (5) occasion(s) after the Effective Date~~. The termination of a Covenant Compliance as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Covenant Compliance Event in the event that the conditions set forth in this definition again arise.

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

“Credit Card Processor” shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower<sup>[2]</sup>'s sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

“Credit Card Notifications” has the meaning provided therefor in Section ~~[2]2.21(a)~~.~~[21(a)]~~

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

“Credit Extensions” as of any day, shall be equal to the sum of (a) the principal balance of all Loans then outstanding, and (b) the then amount of the Letter of Credit Outstandings.

“Credit Party” means (a) the Lenders, (b) the Agent and its Affiliates, (c) the Issuing Bank, (d) the Arrangers, (e) each beneficiary of each indemnification obligation undertaken by any

Borrower under any Loan Document, and (f) the successors and permitted assigns of each of the foregoing.

“Customer Credit Liabilities” means, at any time, the aggregate face value at such time of (a) outstanding gift certificates and gift cards of the Borrowers entitling the holder thereof to use all or a portion of the certificate to pay all or a portion of the purchase price for any Inventory, including, without limitation, “GameStop Loyalty Cards” or other discount cards, and (b) outstanding merchandise credits of the Borrowers.

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

“DDA” means any checking or other demand deposit account maintained by any Borrower, other than Excluded Accounts.

“DDA List” has the meaning provided therefor in Section ~~2~~2.21(a).~~[21(a)]~~

“DDA Notification” has the meaning provided therefor in Section ~~2.21(a)~~2.21(a).

“Debt Maturity Reserve” shall mean, during any Debt Reserve Period, an amount equal to the then outstanding principal balance of the Indebtedness under the 2019 Senior Notes (in the case of the 2019 Notes Reserve Period) and the existing senior notes due 2021 Senior Notes (in the case of the 2021 Notes Reserve Period) on the date which is ninety-one (91) days prior to the maturity date of such Indebtedness, reduced to give effect to any payments of repayments of such Indebtedness made during such Debt Reserve Period to the extent such payments are permitted hereunder (including as a result of any Permitted Refinancing of such Indebtedness).

“Debt Reserve Period” shall mean (i) the period beginning on the 91st day prior to the maturity date of the Indebtedness under the 2019 Senior Notes (and ending on the earlier of the repayment of such Indebtedness (including as a result of a Permitted Refinancing of such Indebtedness) or the extension of the maturity date of such Indebtedness to a date which is at least ninety-one (91) days after the then Maturity Date (the “2019 Notes Reserve Period”)) and (ii) the period beginning on the 91st day prior to the maturity date of the Indebtedness under the 2021 Senior Notes and ending on the earlier of the repayment of such Indebtedness (including as a result of a Permitted Refinancing of such Indebtedness) or the extension of the maturity date of such Indebtedness to a date which is at least ninety-one (91) days after the then Maturity Date (the “2021 Notes Reserve Period”).

“Debt Service Charges” means [ ]for any period, the sum of (a) Consolidated Interest Expense paid or required to be paid for such period, plus (b) principal payments made or required to be made on account of Indebtedness (excluding the Obligations and any obligations under Synthetic Leases but including, without limitation, Capital Lease Obligations) of the Borrower Affiliated Group (excluding any Subsidiaries which are not Domestic Subsidiaries Controlled by the Borrowers) for such period, in each case determined on a Consolidated basis in accordance with GAAP.

“Debtor Relief Laws” means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” has the meaning provided therefor in Section [~~2~~2.10.~~10~~.]

“Defaulting Lender” means, subject to Section [~~8.12(b)~~8.12(b)], any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder, or (ii) pay to the Agent, the Issuing Bank, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Lead Borrower, the Agent, the Issuing Bank or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (c) has failed, within three Business Days after written request by the Agent or the Lead Borrower, to confirm in writing to the Agent and the Lead Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agent and the Lead Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, [~~or~~] (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section [~~8.12(b)~~8.12(b)]) as of the date established therefor by the Agent in a written notice of such determination, which shall be

delivered by the Agent to the Lead Borrower, the Issuing Bank, the Swingline Lender and each other Lender promptly following such determination.

“De Minimus Account” means any deposit account with an average daily balance equal to or less than \$100,000; provided that the aggregate average daily balance of all such accounts does not at any one time exceed \$1,000,000.

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

“Dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary [of any Borrower]that is organized under the laws of [any jurisdiction of ]the United States of America, any state or territory thereof or the District of Columbia that is not either (a) a FSHCO, (b) a direct or indirect subsidiary of a Controlled Foreign Corporation, or (c) an entity that is disregarded as a separate entity of a Controlled Foreign Corporation or a FSHCO for United States Federal income tax purposes.

“EDGAR” means the Electronic Data Gathering, Analysis and Retrieval system maintained by the Securities and Exchange Commission.

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

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

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

“Effective Date” means the date on which the conditions specified in Section 4.1 are satisfied (or waived by the Agent).

“Eligible Assignee” means (a) a Credit Party or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of \$250,000,000; (c) an Approved Fund; and (d) any other Person (other than a natural person) approved by the Agent (such approval not to be unreasonably withheld or delayed); provided that notwithstanding the

foregoing, “Eligible Assignee” shall not include a Borrower or Facility Guarantor or any member of the Borrower Affiliated Group.

“Eligible Credit Card Receivables” means Credit Card Receivables due to a Borrower on a non[-] recourse basis from a Credit Card Issuer or Credit Card Processor, in each case acceptable to the Agent in its reasonable discretion, as arise in the ordinary course of business, which have been earned by performance and are deemed by the Agent in its reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base. Without limiting the foregoing, unless the Agent otherwise agrees, none of the following shall be deemed to be Eligible Credit Card Receivables:

- (a) Credit Card Receivables that have been outstanding for more than five (5) Business Days from the date of sale;
- (b) Credit Card Receivables with respect to which a Borrower does not have good and valid title, free and clear of any Lien (other than Liens granted to the Agent for its own benefit and the ratable benefit of the other Credit Parties);
- (c) Credit Card Receivables that are not subject to a first priority security interest in favor of the Agent for its own benefit and the ratable benefit of the other Credit Parties (it being the intent that chargebacks in the ordinary course by the credit card processors shall not be deemed violative of this clause);
- (d) Credit Card Receivables which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (to the extent of such claim, counterclaim, offset or chargeback);
- (e) Credit Card Receivables which are acquired in a Permitted Acquisition unless and until the Agent has completed a commercial finance examination of such Credit Card Receivables, establishes an advance rate (which is no higher than the advance rates for existing Eligible Credit Card Receivables unless the Supermajority Lenders otherwise consent) and reserves (if applicable) therefor, and otherwise agrees that such Credit Card Receivables shall be deemed Eligible Credit Card Receivables; or
- (f) Credit Card Receivables which the Agent determines in its Permitted Discretion to be uncertain of collection.

“Eligible In-Transit Inventory” shall mean, as of the date of determination thereof, without duplication of other Eligible Inventory, Inventory (a) which has been shipped from a foreign location for receipt by a Borrower within sixty (60) days of the date of determination, but which has not yet delivered to such Borrower, (b) for which payment has been made by a Borrower and title has passed to such Borrower, (c) for which the document of title is reasonably acceptable to the Agent and reflects a Borrower as consignee (along with delivery to such Borrower of the documents of title with respect thereto), (d) as to which the Agent has control over the documents of title which evidence ownership of the subject Inventory (such as, if requested by the Agent, by the delivery of a Customs Broker Agreement, reasonably satisfactory to the Agent), and (e) which otherwise would

constitute Eligible Inventory; provided that the Agent may, in its discretion, exclude any particular Inventory from the definition of “Eligible In-Transit Inventory” in the event the Agent determines that such Inventory is subject to any Person<sup>[2]</sup>'s right of reclamation, repudiation, stoppage in transit or any event has occurred or is reasonably anticipated by the Agent to arise which may otherwise adversely impact the value of such Inventory or the ability of the Agent to realize upon such Inventory.

“Eligible Inventory” shall mean, as of the date of determination thereof, (a) Eligible In-Transit Inventory, (b) Eligible L/C Inventory, and (c) items of Inventory of the Borrowers that are finished goods, merchantable and readily saleable to the public in the ordinary course deemed by the Agent in its reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base. Without limiting the foregoing, unless otherwise approved in writing by the Agent, none of the following shall be deemed to be Eligible Inventory:

(a) Inventory that is not owned solely by a Borrower, or is leased by or is on consignment to a Borrower, or which is consigned by a Borrower, or such Borrower does not have good and valid title thereto;

(b) Inventory (including any portion thereof in transit from vendors, other than Eligible In-Transit Inventory and Eligible L/C Inventory) that is not located at a warehouse facility or store that is owned or leased by Borrower;

(c) Inventory that represents (i) goods damaged, defective or otherwise unmerchantable, or (ii) goods returned to the vendor;

(d) Inventory that is not located in the United States of America (excluding territories and possessions thereof) other than Eligible In-Transit Inventory and Eligible L/C Inventory;

(e) Inventory that is not subject to a perfected first[-] priority security interest in favor of the Agent for the benefit of the Credit Parties;

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

(g) Inventory as to which insurance in compliance with the provisions of Section 5.7 hereof is not in effect;

(h) Inventory which has been sold but not yet delivered; or

(i) Inventory which is acquired in a Permitted Acquisition or which is owned by a Subsidiary created after the Effective Date (except to the extent that such Inventory has been acquired by such Subsidiary from another Borrower and otherwise constitutes Eligible Inventory) unless and until the Agent has completed an appraisal of such Inventory and a commercial finance examination, establishes an advance rate (which is no higher than the advance rate for existing Eligible Inventory unless the Supermajority Lenders otherwise consent) and Inventory Reserves (if applicable) therefor, and otherwise agrees that such Inventory shall be deemed Eligible Inventory.

“Eligible L/C Inventory” shall mean, as of the date of determination thereof, without duplication of other Eligible Inventory, Inventory (a) not yet delivered to the Borrowers, (b) the purchase of which is supported by a Commercial Letter of Credit having an expiry within sixty (60) days of such date of determination, (c) which has been consigned to a Borrower as consignee (along with delivery to a Borrower of the documents of title with respect thereto), (d) as to which the Agent has control over the documents of title which evidence ownership of the subject Inventory (such as, if requested by the Agent, by the delivery of a Customs Broker Agreement, reasonably satisfactory to the Agent), and (e) which otherwise would constitute Eligible Inventory; provided that the Agent may, in its discretion, exclude any particular Inventory from the definition of “Eligible L/C Inventory” in the event the Agent determines that such Inventory is subject to any Person<sup>[2]</sup>'s right of reclamation, repudiation, stoppage in transit or any event has occurred or is reasonably anticipated by the Agent to arise which may otherwise adversely impact the value of such Inventory or the ability of the Agent to realize upon such Inventory.

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, or handling, treatment, storage, disposal, Release or threatened Release of any Hazardous Material.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, natural resource damage, costs of environmental remediation, administrative oversight costs, fines, penalties or indemnities), of any Person directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

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

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

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30[-] day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by a Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by a Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by a Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by a Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from a Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

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

“Event of Default” has the meaning assigned to such term in Section 7.1. An “Event of Default” shall be deemed to have occurred and to be continuing unless and until that Event of Default has been duly waived by the Agent in writing or cured to the reasonable satisfaction of the Agent.

“Excess Availability” means, as of any date of determination, the excess, if any, of (a) the Loan Cap, over (b) the outstanding Credit Extensions.

“Excluded Accounts” means (a) deposit accounts exclusively holding (i) cash collateral securing one or more reimbursement obligations under letters of credit, surety bonds or Hedging Agreements, which letters of credit, surety bonds or Hedging Agreements, as applicable, are otherwise not Obligations, all to the extent permitted under the Credit Agreement, or (ii) proceeds of Collateral securing Permitted Senior Debt on a first priority basis in accordance with requirements imposed by the documents governing such Permitted Senior Debt, and (b) any deposit account solely and exclusively used for taxes, payroll, employee benefits or similar items and any other account or financial asset in which such security interest would be unlawful or in violation of any Plan or employee benefit agreement.

“Excluded Subsidiary” means (a) any Subsidiary of a Borrower that is not a wholly owned Subsidiary, (b) any Subsidiary of Borrower that is prohibited by law, regulation or contractual obligation from providing a Guarantee or becoming a Borrower hereunder or that would require a governmental (including regulatory) consent, approval, license or

authorization in order to provide such Guarantee or become a Borrower or where the provision of such Guarantee or becoming a Borrower would result in material adverse tax consequences as determined by the Borrowers in good faith, (c) any Foreign Subsidiary, and (d) any not-for-profit Subsidiaries, captive insurance or warranty Subsidiaries and special purpose entities used for permitted financings. For the avoidance of doubt, as of the Second Amendment Effective Date, GameStop Service Holdings, LLC and GameStop Service Company, LLC are considered Excluded Subsidiaries per clause (d) above.

“Excluded Swap Obligation” means, with respect to any Borrower or Facility Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Borrower or Facility Guarantor under the Facility Guaranty of, or the grant under a Loan Document by such Borrower or Facility Guarantor of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section ~~9.20~~9.20 hereof and any and all guarantees of such Borrower’s or Facility Guarantor’s Swap Obligations by other Borrower or Facility Guarantor) at the time the guaranty of such Borrower or Facility Guarantor, or grant by such Borrower or Facility Guarantor of a security interest, becomes effective with respect to such Swap Obligation.

“Excluded Taxes” means, with respect to the Agent, any Lender, the Issuing Banks or any other recipient of any payment to be made by or on account of any obligation of the Borrowers hereunder, (a) ~~income or franchise taxes~~Taxes imposed on (or measured by) its ~~gross or net income by the United States of America, or by the jurisdiction under the laws of which~~net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such recipient ~~is~~being organized ~~or in which~~under the laws of, or having its principal office ~~is located~~ or, in the case of any Lender, in which its applicable lending office is located in, ~~(b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which any Borrower is located, (c) the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Foreign Lender (other than an assignee pursuant to a request by a Borrower under Section ~~2.26(b)~~2.28(b)), any U.S. withholding tax that is imposed on amounts payable to such Foreign Lender pursuant to a law in effect at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender’s failure to comply with Section ~~2.24~~2.26, except to the extent that such Foreign Lender (or its assignor, if any) was entitled, ~~at~~immediately before the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding tax pursuant to Section ~~2.24~~2.26 and (d) any United States federal withholding ~~tax that would not have been imposed but for a failure by such recipient (or any financial institution through which any payment is made to such recipient) to comply with the applicable requirements of FATCA.~~Taxes imposed under FATCA.~~

“Existing Credit Agreement” shall have the meaning set forth in the recitals hereto.

~~["Extraordinary Receipt" means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, indemnity payments and] any purchase price adjustments[-]~~

"Facility Guaranty" means the Guaranty executed by the Facility Guarantors in favor of the Credit Parties.

"Facility Guarantors" means each direct or indirect Domestic Subsidiary of the Borrowers.

"FATCA" shall mean Sections 1471 through 1474 of the Code and the United States Treasury Regulations ~~[or published guidance with respect thereto.]~~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 agreement entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code and any legislation, regulation or guidance giving effect to such intergovernmental agreements.

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Agent from three Federal funds brokers of recognized standing selected by it.

"Fee Letter" means the letter entitled "Fee Letter" by, among others, ~~[GameStop Corp.]~~the Lead Borrower and the Agent dated as of ~~[January 9]~~October 4, 201[4]Z, as such letter may from time to time be amended.

"FILO Credit Facility" has the meaning provided therefor in Section 2.30(a).

"FILO Credit Facility Amendment" has the meaning provided therefor in Section 2.30(c).

"FILO Lenders" has the meaning provided therefor in Section 2.30(a).

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

"Fixed Charge Coverage Ratio" means, as of the last day of any month, for the twelve-month period then ended, the ratio of (a) an amount equal to Consolidated EBITDA less Unfinanced Capital Expenditures less Taxes paid in cash, in each case for such period, to (b) Debt Service Charges for such period. Consolidated EBITDA, Capital Expenditures and Taxes shall be calculated without regard to (i) those items attributable to any Person prior to the date it becomes a Domestic Subsidiary of the Lead Borrower or any of its other Domestic Subsidiaries or is merged into or consolidated with the Lead Borrower or any of its Domestic Subsidiaries or that Person~~[-]~~'s assets

are acquired by the Lead Borrower or any of its Domestic Subsidiaries and (ii) any Subsidiaries other than Domestic Subsidiaries Controlled by the Borrowers.

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

“Foreign Subsidiary” means any Subsidiary ~~[that is organized under the laws of a jurisdiction other than the United States of America or any State] thereof or the District of Columbia~~ which is not a Domestic Subsidiary.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the Issuing Bank, such Defaulting Lender<sup>[2]</sup>'s Commitment Percentage of the Letter of Credit Outstandings other than Letter of Credit Outstandings as to which such Defaulting Lender<sup>[2]</sup>'s participation obligation has been reallocated to other Lenders or cash collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender<sup>[2]</sup>'s Commitment Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender<sup>[2]</sup>'s participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

“Fronting Fee” has the meaning provided therefor in Section 2.13(d).

“FSHCO” means any Person substantially all of the assets of which consist of Equity Interests of one or more Controlled Foreign Corporations or FSHCOs; provided that for this definition, the term “Equity Interests” includes all interests in a Controlled Foreign Corporation or FSHCO treated as equity for U.S. federal income tax purposes.

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

“GAAP” means accounting principles which are (a) consistent with those promulgated or adopted by the Financial Accounting Standards Board and its predecessors (or successors) in effect and applicable to that accounting period in respect of which reference to GAAP is being made, and (b) consistently applied with past financial statements of the Borrower Affiliated Group adopting the same principles.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means 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 primary 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.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, mold and other fungi, bacteria, and all other substances or wastes of any nature regulated pursuant to any Environmental Law, including any material listed as a hazardous substance under Section 101(14) of CERCLA.

“Hedging Agreement” means any interest rate protection agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, foreign currency exchange agreement, commodity price protection agreement, or other interest or currency exchange rate or commodity price hedging arrangement designed to hedge against fluctuations in interest rates or foreign exchange rates.

“Increase Effective Date” shall have the meaning provided in Section ~~[2]2.29(d).~~~~[29(d)].~~

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money (including any obligations which are without recourse to the credit of such Person), (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (i) current accounts payable incurred in the ordinary course of business and (ii) any purchase price adjustments, earn-out or other similar obligations in connection with Acquisitions permitted hereunder until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (j) to the extent not otherwise included, all net obligations of such Person under Hedging Agreements, and (k) the principal and interest portions of all rental obligations of such Person under any Synthetic Lease, tax retention operating

lease, off-balance sheet loan or similar off-balance sheet financing where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitee” has the meaning provided therefor in Section 9.3(b).

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

“Intellectual Property Security Agreement” shall mean the Second Amended and Restated Patent and Trademark Security Agreement dated as of the [~~date hereof~~ Effective Date] and executed and delivered by the Borrowers to the Agent for the ratable benefit of the Credit Parties.

“Interest Payment Date” means (a) with respect to any Prime Rate Loan (including a Swingline Loan), the first day of each month, and (b) with respect to any LIBOR Loan, on the last day of the Interest Period applicable to the Borrowing of which such Loan is a part, and, in addition, if such LIBOR Loan has an Interest Period of greater than 90 days, on the last day of the third month of such Interest Period.

“Interest Period” means, with respect to any LIBOR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Lead Borrower may elect by notice to the Agent in accordance with the provisions of this Agreement, provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month during which such Interest Period ends) shall end on the last Business Day of the calendar month of such Interest

Period, (c) any Interest Period which would otherwise end after the Termination Date shall end on the Termination Date, and (d) notwithstanding the provisions of clause (c), no Interest Period shall have a duration of less than one month, and if any Interest Period applicable to a LIBOR Borrowing would be for a shorter period, such Interest Period shall not be available hereunder. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

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

“Inventory Advance Rate” means, for each calendar year, (i) for the period from ~~August~~ July 15 through October ~~3~~15 of such calendar year, 92.5%, and (ii) at all other times during such year, 90%.

“Inventory Reserves” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as may be established from time to time by the Agent in the Agent's Permitted Discretion (after consultation with the Lead Borrower (whose consent to any Inventory Reserve shall not be required)) with respect to the determination of the saleability, at retail, of the Eligible Inventory or which reflect such other factors as may affect the appraised value of the Eligible Inventory. Without limiting the generality of the foregoing, Inventory Reserves may include (but are not limited to) reserves based on (i) obsolescence; (ii) seasonality; (iii) Shrink; (iv) imbalance; (v) change in Inventory character; (vi) change in Inventory composition; (vii) change in Inventory mix; (viii) markdowns (both permanent and point of sale); and (ix) retail markons and markups inconsistent with prior period practice and performance; industry standards; current business plans; or advertising calendar and planned advertising events. Inventory Reserves shall be established and calculated in a manner and methodology consistent with the Agent's practices as of the Second Amendment Effective Date with other similarly situated borrowers.

“Investment” has the meaning provided therefore in Section 6.4.

“Issuing Bank” means (i) Bank of America, and any successor to Bank of America in such capacity, and (ii) any other Lender consented to by the Agent and the Lead Borrower (such consent not to be unreasonably withheld). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. For the avoidance of doubt, no Lender under clause (ii) hereof shall be appointed as an Issuing Bank without the consent of such Lender.

“Latamel” means Latamel S.L., a limited liability company organized under the laws of Spain.

“L/C Disbursement” means a payment made by the Issuing Bank pursuant to a Letter of Credit.

“Lead Borrower” means GameStop Corp.

“Lenders” shall mean the Persons identified on Schedule 1.1 and each assignee that becomes a party to this Agreement as set forth in Section 9.5(b).

“Letter of Credit” shall mean each Banker's Acceptance and each letter of credit that is (i) issued pursuant to this Agreement for the account of any Borrower or any Facility Guarantor, (ii) a Standby Letter of Credit or Commercial Letter of Credit, (iii) issued in connection with the purchase of Inventory by any Borrower or any Facility Guarantor or for any other purpose that is reasonably acceptable to the Agent, and (iv) in form and substance reasonably satisfactory to the Issuing Bank.

“Letter of Credit Fees” shall mean the fees payable in respect of Letters of Credit pursuant to Section 2.13.

“Letter of Credit Outstandings” shall mean, at any time, the sum of (a) with respect to Letters of Credit outstanding at such time, the aggregate maximum amount that then is or at any time thereafter may become available for drawing or payment thereunder plus (b) all amounts theretofore drawn or paid under Letters of Credit for which the Issuing Bank has not then been reimbursed.

“LIBOR Borrowing” shall mean a Borrowing comprised of LIBOR Loans.

“LIBOR Loan” shall mean any Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of Section 2.3.

~~“LIBOR Rate” means:~~ LIBOR Rate” means the per annum rate of interest (rounded upwards, if necessary, to the next 1/16 of one percent (1%) and in no event less than zero) determined by Agent at or about 11:00 a.m. (London time) two Business Days prior to an interest period for a term equivalent to such period, equal to the London Interbank Offered Rate, or comparable or successor rate approved by Agent, as published on the applicable Reuters screen page (or other commercially available source designated by Agent from time to time); provided, that any comparable or successor rate shall be applied by Agent, if administratively feasible, in a manner consistent with market practice.

~~[(a)—for any Interest Period with respect to a LIBO Loan, the rate per annum equal to the British Bankers Association LIBOR Rate or the successor thereto if the British Bankers Association is no longer making a LIBOR rate available (“LIBOR”), as published by Reuters] (or other commercially available source [providing quotations of LIBOR as designated by the Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “LIBOR Rate” for such Interest Period shall be the rate per annum determined by the Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBO Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period; and]~~

~~[(b) — for any interest calculation with respect to a Prime Rate Loan on any date, the rate per annum equal to (i) LIBOR, at approximately 11:00 a.m., London time determined two Business Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Prime Rate Loan being made or maintained and with a term equal to one month would be offered by Bank of America’s London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination.]~~

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (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 and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Line Letter” means that certain uncommitted discretionary line of credit made by Bank of America, N.A. in favor of GameStop Europe Holdings S.a.r.l. and certain of its subsidiaries in a letter agreement dated ~~May 20, 2013~~ [as of the Second Amendment Effective Date](#) (as amended, restated, amended and restated or otherwise modified and in effect from time to time), pursuant to which Bank of America, N.A. may, in its discretion, make loans and issue commercial and standby letters of credit or bank guarantees in an amount of up to \$20,000,000 in the aggregate.

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

“Loan Account” has the meaning assigned to such term in Section 2.20(a).

“Loan Cap” means, at any time of determination, the lesser of (a) the Total Commitments or (b) the Borrowing Base.

“Loan Documents” means this Agreement, the Notes, the Letters of Credit, the Fee Letter, all Borrowing Base Certificates, the Blocked Account Agreements, the DDA Notifications, the Credit Card Notifications, the Security Documents, the Facility Guaranty and any other instrument or agreement now or hereafter executed and delivered in connection herewith or therewith, including (i) any Cash Management Services provided by the Agent, any Lender or any of their respective Affiliates, and (ii) any Bank Product provided by the Agent, any Lender or any of their respective Affiliates, each as amended and in effect from time to time.

“Loans” shall mean all loans (including, without limitation, Revolving Loans and Swingline Loans) at any time made to the Borrowers or for account of the Borrowers pursuant to this Agreement.

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

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, property, assets, condition, financial or otherwise, of the Borrower Affiliated Group, taken as a whole, (b) the ability of the Borrower Affiliated Group, taken as a whole, to perform any material obligation or to pay any Obligations under this Agreement or any of the other Loan Documents, or (c) the validity or enforceability of this Agreement or any of the other Loan Documents or any of the material rights or remedies of the Agent or the Lenders hereunder or thereunder.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit) of any one or more of the Borrowers in an aggregate principal amount exceeding \$20,000,000.

“Material Foreign Subsidiary” means each Foreign Subsidiary which is a direct Subsidiary of a Borrower which, as of the last day of any fiscal quarter, satisfied any one or more of the following tests:

(a) such Foreign Subsidiary's total tangible assets (after intercompany eliminations), as determined in accordance with GAAP, exceeds 10% of consolidated total tangible assets of the Borrower Affiliated Group); or

(b) such Foreign Subsidiary's Consolidated Net Income for the previous twelve months ending as of the last day of such fiscal quarter exceeds 10% of the Consolidated Net Income for the previous twelve months ending as of the last day of such fiscal quarter of the Borrower Affiliated Group; or

(c) such Foreign Subsidiary's Consolidated Net Worth exceeds 10% of the Consolidated Net Worth of the Borrower Affiliated Group.

“Maturity Date” means ~~March~~ November 2~~[5]~~<sup>0</sup>, 20~~[19]~~<sup>22</sup>.

“Maximum Rate” has the meaning provided therefor in Section 9.13.

~~["Micromania Acquisition" means the acquisition by the Lead Borrower or a Subsidiary thereof of the issued and outstanding equity interests in SFMI Micromania S.A.S. pursuant to that certain purchase agreement by and among the Lead Borrower and SFMI Micromania S.A.S.]~~

“Minority Lenders” has the meaning provided therefor in Section 9.2(c).

“Moody's” means Moody's Investors Service, Inc.

~~["Mortgages" means the Mortgages, Security Agreements and Assignments and Deeds of Trust between the Borrower owning the Real Estate encumbered thereby and the Agent for its own benefit and the ratable benefit of the other Credit Parties.]~~

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

[ ]<sup>[u]</sup>“Noncompliance Notice[<sup>[u]</sup>” has the meaning provided therefor in Section 2.5(b).

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Notes” shall mean (i) the promissory notes of the Borrowers substantially in the form of Exhibit B-1, each payable to the order of any Lender requesting such Note, evidencing the Revolving Loans, and (ii) if requested by the Swingline Lender, the promissory note of the Borrowers substantially in the form of Exhibit B-2, payable to the Swingline Lender, evidencing the Swingline Loans.

“Obligations” means (a) the due and punctual payment by the Borrowers of (i) the principal of, and interest (including all interest that accrues after the commencement of any proceeding under any Debtor Relief Laws naming any such Borrower as the debtor in such proceeding, whether or not allowed in such case or proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by the Borrowers under the Credit Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral and (iii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise, of the Borrowers to the Credit Parties under this Agreement and the other Loan Documents (including all fees, costs, expenses and indemnities that accrues after the commencement of any proceeding under any Debtor Relief Laws naming any such Borrower as the debtor in such proceeding, whether or not allowed in such case or proceeding), (b) the due and punctual payment and performance of all covenants, agreements, obligations and liabilities of the Borrowers under or pursuant to this Agreement and the other Loan Documents, and (c) the payment and performance under any transaction with any [~~of the~~] Arranger, Agent or any Lender, or any of their respective Affiliates, which arises out of (i) any Cash Management Services, or (ii) Bank Products; provided that Obligations of a Borrower or Facility Guarantor shall exclude any Excluded Swap Obligations with respect to such Borrower or Facility Guarantor.

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

“Other Connection Taxes” means, with respect to Agent, any Lender, the Issuing Banks or any other recipient of any payment to be made by or on account of any obligation of the Borrowers hereunder, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means any and all current or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document~~[-]~~, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.28).

“Overadvance” means, at any time of calculation, a circumstance in which the Credit Extensions exceed the Loan Cap.

“Participant” has the meaning provided therefore in Section 9.5(e).

“Participant Register” has the meaning provided therefore in Section 9.5(f).

“Payment Conditions” means, at the time of determination, that (a) no Default or Event of Default then exists or would arise as a result of the making such payment or Permitted Acquisition, ~~[and ]~~(b) either (i) Agent has determined that after giving effect to such payment or Permitted Acquisition, Excess Availability on a pro-forma basis, and as projected for each day of the ~~[twelve]~~six (~~[12]~~6) months following such payment or the consummation of such Permitted Acquisition, will be equal to or greater than twenty~~[-five (25%)]~~ percent (20%) of the then Borrowing Base, or (ii) the Agent has determined that after giving effect to such payment or the consummation of such Permitted Acquisition, (x) Excess Availability on a pro-forma basis, and as projected for each day of the ~~[twelve]~~six (~~[12]~~6) months following such payment or Permitted Acquisition, will be equal to or greater than twelve and one-half ~~[(12.5%) ]~~percent (12.5%) of the then Borrowing Base and (y) the Fixed Charge Coverage Ratio, as calculated on a pro-forma basis for the twelve months prior to such payment or consummation of such Permitted Acquisition, is greater than 1.0:1.0, and (c) for any such payment or Permitted Acquisition in excess of \$50,000,000, the Lead Borrower shall have delivered a Transaction Certificate to the Agent duly executed by a Financial Officer of the Lead Borrower and attaching evidence (reasonably detailed and reasonably satisfactory to the Agent) of satisfaction of the conditions contained in clauses (b)(i) and (b)(ii) above, as applicable.

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

“Perfection Certificate” means a certificate in the form of Annex 1 to the Security Agreement or any other form approved by the Agent.

“Permitted Acquisition” means an Investment in, a purchase of the ~~[capital stock]~~Equity Interests in, or the acquisition of all or a substantial portion of the assets or properties of, any Person, the entering into any exchange of securities with any Person, or the entering into any transaction, merger or consolidation of any Person, or any acquisition of any retail store locations of any Person, in each case that is organized under the laws of the United States (each of the foregoing an “Acquisition”) in each case which satisfies each of the following conditions:

(~~[i]~~a) The Acquisition is of a business permitted to be conducted by the Borrowers pursuant to Section 6.3(b) hereof; and

(~~(h)~~b) The Person making the Acquisition must be a Borrower or a Subsidiary which will become a Borrower or Facility Guarantor in accordance with Section 5.14 hereof and the Borrowers (including such Person) shall take such steps as are necessary to grant to the Agent, for the benefit of the Credit Parties, a legal, valid and enforceable first priority security interest (except as provided in Section ~~[6.2]~~6.2 hereof) in all of the assets and ~~[capital stock]~~Equity Interests acquired in connection with such acquisition;

(~~(h)~~c) If a Borrower shall merge with such other Person, such Borrower shall be the surviving party of such merger; and

(~~(i)~~d) the Payment Conditions shall be satisfied.

“Permitted Discretion” means the Agent's good faith credit judgment based upon any factor or circumstance which it reasonably believes in good faith: (i) will or could reasonably be expected to adversely affect the value of the Collateral, the enforceability or priority of the Agent's Liens thereon in favor of the Credit Parties or the amount which the Agent and the Credit Parties would likely receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation of such Collateral; (ii) suggests that any collateral report or financial information delivered to the Agent by or on behalf of the Borrower Affiliated Group is incomplete, inaccurate or misleading in any material respect; (iii) could reasonably be expected to materially increase the likelihood of a proceeding under any Debtor Relief Law involving any member of the Borrower Affiliated Group; or (iv) creates or reasonably could be expected to create a Default or Event of Default. In exercising such judgment, the Agent may consider such factors or circumstances already included in or tested by the definition of Eligible Credit Card Receivables, Eligible in-Transit Inventory, Eligible Inventory, or Eligible L/C Inventory, as well as any of the following: (A) the financial and business climate and prospects of any member of the Borrower Affiliated Group's industry and general macroeconomic conditions; (B) changes in demand for and pricing of Inventory; (C) changes in any concentration of risk with respect to Inventory; (D) any other factors or circumstances that will or could reasonably be expected to have a Material Adverse Effect; (E) audits of books and records by third parties, history of chargebacks or other credit adjustments; and (F) any other factors that change or could reasonably be expected to change the credit risk of lending to the Borrowers on the security of the Inventory. Notwithstanding the foregoing, it shall not be within Permitted Discretion for the Agent to establish Reserves which are duplicative of each other whether or not such reserves fall under more than one reserve category.

“Permitted Encumbrances” means:

(~~(i)~~a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 5.5;

(~~(h)~~b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 60 days or are being contested in compliance with Section 5.5;

(~~iii~~c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, old-age pension and other social security laws or regulations;

(~~iv~~d) deposits to secure the performance of bids, trade contracts, leases, contracts (other than for the repayment of borrowed money), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(~~v~~e) judgment liens in respect of judgments that do not constitute an Event of Default under Section 7.1(m);

(~~vi~~f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Borrowers or any other member of the Borrower Affiliated Group;

(~~vii~~g) Possessory liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the date hereof and Permitted Investments, provided that such liens (a) attach only to such Investments and (b) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(~~viii~~h) Liens in favor of a financial institution encumbering deposits (including the right of setoff) held by such financial institution in the ordinary course of its business and which are within the general parameters customary in the banking industry; and

(~~ix~~i) Landlords' and lessors' liens in respect of rent that is not overdue by more than thirty (30) days or which is being contested in compliance with Section 5.5;

provided that, except as provided in any one or more of clauses (i) through (ix) above, the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted Foreign Acquisition" means any Investment made by a Borrower or Subsidiary of any Borrower in, a purchase of the ~~capital stock or other equity interests~~ Equity Interests of, or the acquisition of all or a substantial portion of the assets or properties of, any Person, the entering into any exchange of securities with any Person, or the entering into any transaction, merger or consolidation of any Person, or any acquisition of any retail store locations of any Person, in each case, that is organized under the laws of a jurisdiction other than the United States of America or any state thereof or the District of Columbia (a "Foreign Acquisition"), in each case which satisfies each of the following conditions:

(~~a~~) (a) The Foreign Acquisition is of a business permitted to be conducted by the Borrowers pursuant to Section ~~6.3(b)~~ 6.3(b) hereof;

~~(b)~~ (b) If a Borrower shall merge with such other Person, such Borrower shall be the surviving party of such merger;

~~(c)~~ (c) The Payment Conditions shall be satisfied; and

~~(d)~~ (d) The total consideration paid or payable in connection with the Foreign Acquisition does not exceed (A) \$150,000,000, in each case for any one transaction or a series of related transactions, (B) \$300,000,000 for all such transactions in any twelve month period, or (C) \$500,000,000 in the aggregate for all such acquisitions from and after the [Second Amendment](#) Effective Date.

“Permitted Investments” means each of the following:

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

~~(ii)~~ (ii) Investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, a credit rating of at least A-1 or P-1 from S&P or from Moody's;

~~(iii)~~ (iii) Investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and demand deposit and money market deposit accounts issued or offered by, any domestic office or European Union office of any commercial bank organized under the laws of the United States of America, any state thereof or the European Union that has a combined capital and surplus and undivided profits of not less than \$100,000,000; provided that such Investments shall be limited to commercial banks organized under the laws of the United States of America or any state thereof during the continuance of a Cash Dominion Event;

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

~~(v)~~ (v) money market mutual funds, 90% of the investments of which are in cash or investments contemplated by clauses (i) through (iv) of this definition; and

~~(vi)~~ (vi) Investments by a Borrower consistent with such Borrower's current investment policy, which Investments are approved by the Agent from time to time;

provided that, notwithstanding the foregoing, after the occurrence and during the continuance of a Cash Dominion Event, (i) no such new Investments shall be permitted by a Borrower

unless either (A) no Loans are then outstanding, or (B) the Investment is a temporary Investment pending expiration of an Interest Period for a LIBOR Loan, the proceeds of which Investment will be applied to the Obligations after the expiration of such Interest Period, and (ii) all such Investments are pledged by the applicable Borrower to the Agent as additional collateral for the Obligations pursuant to such agreements as may be reasonably required by the Agent.

“Permitted Overadvance” means an Overadvance determined by the Agent, in its reasonable discretion, (a) which is made to maintain, protect or preserve the Collateral and/or the Lenders' rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties, or (b) which is made to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation, or (c) is made to pay any other amount chargeable to any Borrower hereunder; provided that Permitted Overadvances shall not (i) exceed ten percent (10%) of the then Borrowing Base in the aggregate outstanding at any time or (ii) unless a Liquidation is occurring, remain outstanding for more than thirty consecutive Business Days, unless in case of clause (ii) the Required Lenders otherwise agree; and provided further that the foregoing shall not (1) modify or abrogate any of the provisions of Section 2.6(f) regarding the Lenders' obligations with respect to L/C Disbursements or the provisions of Section ~~[2.5]~~2.5 and ~~[2.7]~~2.7 regarding the Lenders' obligations with respect to Swingline Loans, or (2) result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances, and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder, and further provided that in no event shall the Agent make an Overadvance, if after giving effect thereto, the principal amount of the Credit Extensions (including any Overadvance or proposed Overadvance) would exceed the Total Commitments.

“Permitted Refinancing” means, with respect to any Person, 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 a Permitted Refinancing); provided, that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premiums thereon and underwriting discounts, defeasance costs, fees, commissions and expenses), (b) the weighted average life to maturity of such Permitted Refinancing is greater than or equal to the weighted average life to maturity of the Indebtedness being Refinanced (c) such Permitted Refinancing shall not require any scheduled principal payments due prior to the Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Maturity Date for the Indebtedness being Refinanced, (d) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing shall be subordinated in right of payment to such Obligations on terms at least as favorable to the Credit Parties as those contained in the documentation governing the Indebtedness being Refinanced (e) no Permitted Refinancing shall have different direct or indirect obligors, or greater guarantees or security, than the Indebtedness being Refinanced, (f) such Permitted Refinancing shall be otherwise on terms not materially less favorable to the Credit Parties than those contained in the documentation governing the Indebtedness being Refinanced, including, without limitation, with respect to amortization, maturity, financial and other covenants, (g) the interest rate applicable to any such

Permitted Refinancing shall not exceed the then applicable market interest rate, and (h) at the time thereof, no Default or Event of Default shall have occurred and be continuing.

“Permitted Senior Debt” means Indebtedness of the Borrowers with respect to which:

~~[(a)]~~ (a) no portion of the principal of such Indebtedness in excess of ~~[1]~~5% per annum shall be required to be paid, whether by stated maturity, mandatory or scheduled prepayment or redemption or otherwise, prior to the date that is 90 days after the Maturity Date, provided that the foregoing limitation shall not apply (i) if an event of default under such Indebtedness (after the expiration of any applicable cure periods) has occurred and is continuing, (ii) if a change of control of the Lead Borrower has occurred but only to the extent that the holders of such Permitted Senior Debt are entitled to, and do, require prepayment of any portion of such Indebtedness upon such occurrence, (iii) to the extent that the documentation evidencing such Indebtedness (which documentation shall be reasonably satisfactory the Agent in accordance with clause (c) hereof) requires that any portion of the net cash proceeds from any asset sale or casualty event (after giving effect to any reinvestment rights and any permanent repayment of Indebtedness) be utilized to prepay such Indebtedness (it being agreed that net cash proceeds from the sale of Inventory in the ordinary course of business shall in no events shall be available for payment of the Permitted Senior Debt under this clause (iii)), ~~[(iv) to the extent that the documentation evidencing such Indebtedness (which documentation shall be reasonably satisfactory the Agent in accordance with clause (c) hereof) requires prepayments out of excess cash flow, or (v)]~~ as otherwise may be agreed to by the Agent, subject to standstill and the lien subordination provisions as set forth in an intercreditor agreement pursuant to clause (d) below;

~~[(b)]~~ (b) such Indebtedness may be secured by a first priority Lien on ~~[the trade names of the Borrowers, the capital stock of the Lead Borrower’s Subsidiaries and fixed assets of the Borrowers]~~ only and a second priority Lien on any Collateral of the type that is not included in the Borrowing Base [and] or any related assets and proceeds thereof only and a second priority Lien on any Collateral of the type included in the Borrowing Base and related assets and proceeds thereof (provided that the Agent for the benefit of the Credit Parties is granted a second priority Lien on any assets for which a first priority Lien is granted to secure such Indebtedness);

~~[(c)]~~ (c) the documentation pursuant to which such Indebtedness shall be issued (including, if such Indebtedness is secured, the security documents), shall be reasonably satisfactory to the Agent; and

(d) if such Indebtedness is secured, it shall be subject to an intercreditor agreement reasonably acceptable to the Agent.

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

“Plan” means 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 a Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Pledge Agreement” means the Second Amended and Restated Pledge Agreement dated as of the Effective Date and executed and delivered by one or more of the Borrowers to the Agent, for the benefit of the Credit Parties, as the same may be amended and in effect from time to time, pursuant to which, without limitation, (i) all of the issued and outstanding ~~[capital stock]~~ Equity Interests of all Domestic Subsidiaries owned by a Borrower and (ii) sixty-five percent (65%) (or such lesser amount owned by such Borrower) of ~~[all of the issued and outstanding capital stock of all]~~ Voting Stock of all Material Foreign Subsidiaries is pledged to the Agent (in each case, other than Subsidiaries that are not directly or indirectly wholly owned by such Borrower).

~~[“Prepayment Event” means:]~~

~~[(a) Any disposition (including pursuant to a sale and leaseback transaction) of any property or asset of a Borrower or Facility Guarantor (excluding, unless a Cash Dominion Event then exists, sales of Inventory in the ordinary course of business);]~~

~~[(b) Any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of (and payments in lieu thereof), any property or asset of a Borrower or Facility Guarantor;]~~

~~[(c) The incurrence by a Borrower or Facility Guarantor of any Indebtedness for borrowed money other than Permitted Indebtedness; or]~~

~~[(d) The receipt by any Borrower or Facility Guarantor of any Extraordinary Receipts;]~~

~~[provided that any receipt of proceeds from any of the foregoing clauses (a) through (d) in an amount not to exceed \$20,000,000 in the aggregate prior to the continuance of a Cash Dominion Event shall not be deemed a Prepayment Event.]~~ “Prime Rate” ~~[shall mean, for any day,]~~ means for any day a fluctuating rate per annum (and in no event less than zero) equal to the highest of (a) the ~~[annual]~~ rate of interest ~~[then most recently]~~ in effect for such day as publicly announced from time to time by Bank of America ~~[at its head office in Charlotte, North Carolina]~~ as its “[P]prime [R]rate”~~[-];~~; (b) the Federal Funds ~~[Effective]~~ Rate ~~[in effect on]~~ for such day, plus ~~½ of 1% (0.50%) per annum, or;~~ and (c) the LIBOR Rate for a ~~[30 day]~~ one month interest period as determined on such day, plus 1.00% ~~[per annum]~~. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in Bank of America's prime rate, the Federal Funds ~~[Effective]~~ Rate or the LIBOR Rate, respectively, shall take effect at the opening of business on the day specified in the public announcement of such change.

“Prime Rate Loan” shall mean any Loan bearing interest at a rate determined by reference to the Prime Rate in accordance with the provisions of Section 2.3.

“Qualified ECP Guarantor” means, at any time, each Borrower and Facility Guarantor with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant”

under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

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

“Register” has the meaning set forth in Section 9.5(c).

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

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

“Related Parties” means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

“Release” has the meaning set forth in Section 101(22) of CERCLA.

“Required Lenders” shall mean, at any time, Lenders having Commitments greater than 50% of the Total Commitments, or if the Commitments have been terminated, Lenders whose percentage of the outstanding Loans and Letters of Credit aggregate greater than 50% of all such Loans and Letters of Credit Outstanding; provided that the Commitment of, and the portion of the Credit Extensions held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Reserves” means the Inventory Reserves and Availability Reserves.

“Restricted Debt Payment” has the meaning provided therefor in Section 6.7(b).

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any shares of any class of [~~capital stock~~ Equity Interests of any Borrower, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such shares of [~~capital stock~~ Equity Interests of any Borrower or any option, warrant or other right to acquire any such shares of [~~capital stock~~ Equity Interests of any Borrower.

“Restricted Payment Conditions” means, at the time of determination, that (a) no Default or Event of Default then exists or would arise as a result of the making such Restricted Payment, [~~and~~] (b) either (i) Agent has determined that after giving effect to such Restricted Payment, Excess Availability on a pro-forma basis, and as projected for each day of the [~~twelve~~ six] (~~12~~ 6) months following such payment[ ~~or the consummation of such Permitted Acquisition~~], will be equal to or greater than [~~thirty (30%)~~ twenty] percent (20%) of the then Borrowing Base, or (ii) the Agent has determined that after giving effect to such Restricted Payment, (x) Excess Availability on a pro-forma basis, and as projected for each day of the [~~twelve~~ six] (~~12~~ 6) months following such

Restricted Payment, will be equal to or greater than fifteen [~~(15%)~~] percent (15%) of the then Borrowing Base and (y) the Fixed Charge Coverage Ratio, as calculated on a pro-forma basis for the twelve months prior to such Restricted Payment, is greater than 1.~~1.0~~1.0, and (c) for any Restricted Payment in excess of \$50,000,000, the Lead Borrower shall have delivered a Transaction Certificate to the Agent duly executed by a Financial Officer of the Lead Borrower and attaching evidence (reasonably detailed and reasonably satisfactory to the Agent) of satisfaction of the conditions contained in clauses (b)(i) and (b)(ii) above, as applicable.

“Revolving Loans” means all Loans at any time made by a Lender pursuant to Section 2.

“S&P” means Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc.

~~“Security Agreement” means the Second~~ Sanction(s)” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

“Second Amendment” means that certain Second Amendment to Credit Agreement by and among the as Lead Borrower, the Subsidiary Borrowers party hereto, the Lenders party thereto, and the Agent dated as of the Second Amendment Effective Date.

“Second Amendment Effective Date” means November 20, 2017.

“Security Agreement” means the Third Amended and Restated Security Agreement dated as of the Second Amendment Effective Date and executed and delivered by the Borrowers to the Agent for the benefit of the Credit Parties, as amended and in effect from time to time.

“Security Documents” means the Security Agreement, the Intellectual Property Security Agreement, the Pledge Agreement, the Facility Guaranty~~, the Mortgages~~ and each other security agreement, guaranty or other instrument or document executed and delivered pursuant to Section 5.15 or any other provision hereof or any other Loan Document, to secure any of the Obligations.

“Settlement Date” has the meaning provided in Section 2.7(b) .

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

“Solvent” means, with respect to any Person on a particular date, that on such date (a) at fair valuations, all of the properties and assets of such Person are greater than the sum of the debts, including contingent liabilities, of such Person, (b) the present fair saleable value of the properties and assets of such Person is not less than the amount that would be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its properties and assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts beyond such Person's ability to pay as such

debts mature, and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or transaction, for which such Person's properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in the industry in which such Person is engaged.

“Specified Account” means (a) any account that is subject to a daily sweep into an account that is subject to a Blocked Account Agreement and (b) any De Minimus Accounts.

“Specified Loan Party” means any Borrower or Facility Guarantor that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section ~~[9.20];~~ [9.20]).

“SPV” has the meaning provided in Section 9.5(h).

“Standby Letter of Credit” means any Letter of Credit other than a Commercial Letter of Credit.

“Statutory Reserve Rate” means, for any Interest Period, the rate (expressed as a decimal) applicable to the Agent during such Interest Period under regulations issued from time to time by the Board of Governors of the Federal Reserve System for determining the maximum reserve requirement (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Agent is subject with respect to the Adjusted LIBOR Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBOR Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subsidiary” means, 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 (a) 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, or (b) that is, as of such date, otherwise Controlled, by the parent and/or one or more subsidiaries of the parent. Notwithstanding anything to the contrary contained in this definition of “Subsidiary” or otherwise in this Agreement, Latamel shall not be considered a “Subsidiary” of any of the Borrowers or the Borrower Affiliated Group for the purpose of this Agreement and the Loan Documents so long as it is not Controlled by the Borrowers or the Borrower Affiliated Group.

“Subsidiary Borrowers” means, individually and collectively, GameStop, Inc., Sunrise Publications, Inc., ELBO Inc., EB International Holdings, Inc., [~~Kongregate Inc.~~] GameStop Texas Ltd., Marketing Control Services, Inc., SOCOM, LLC, [~~Spawn Labs, Inc.~~] Simply Mac, Inc., Spring Communications Holding, Inc., GS Mobile, Inc., [Geeknet, Inc.](#) and any other Domestic Subsidiary which becomes a Borrower hereunder.

“Supermajority Lenders” shall mean, at any time, Lenders having Commitments greater than 66 2/3% of the Total Commitments, or if the Commitments have been terminated, Lenders whose percentage of the outstanding Loans and Letters of Credit aggregate greater than 66 2/3% of all such Loans and Letters of Credit Outstanding; provided that the Commitment of, and the portion of the Credit Extensions held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Supermajority Lenders.

“Swap Obligations” means with respect to any Borrower or Facility Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swingline Lender” means Bank of America, in its capacity as lender of Swingline Loans hereunder.

“Swingline Loan” shall mean a Loan made by the Swingline Lender to the Borrowers pursuant to Section 2.5 hereof.

“Synthetic Lease” means any lease or other agreement for the use or possession of property creating obligations which does not appear as Indebtedness on the balance sheet of the lessee thereunder but which, upon the insolvency or bankruptcy of such Person, would be characterized as Indebtedness of such lessee without regard to the accounting treatment.

“Taxes” means any and all current or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

“Termination Date” shall mean the earliest to occur of (i) the Maturity Date, (ii) the date on which the maturity of the Loans are accelerated and the Commitments are terminated in accordance with Section 7.1, or (iii) the date of the occurrence of any Event of Default pursuant to Section 7.1(j) or 7.1(k).

“Total Commitments” shall mean, at any time, the sum of the Commitments at such time. As of the [Second Amendment](#) Effective Date, the Total Commitments are \$4[0]20,000,000.

[“Trading with the Enemy Act” has the meaning provided in Section 9.16.](#)

[“Transaction Certificate” means a certificate substantially in the form of Exhibit F.](#)

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBOR Rate or the Prime Rate.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9; provided further that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “Uniform Commercial Code” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

“UFCA” has the meaning provided in Section ~~[9]9.14.[14.]~~

“UFTA” has the meaning provided in Section ~~[9-14]9.14.~~

“Unfinanced Capital Expenditures” means Capital Expenditures paid in cash which are not financed with the proceeds of Indebtedness (other than the Obligations).

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

“Unused Commitment” shall mean, on any day, (a) the then Total Commitments minus (b) the sum of (i) the principal amount of Loans then outstanding (including the principal amount of Swingline Loans then outstanding), and (ii) the then Letter of Credit Outstandings.

“Voting Stock” means, with respect to any corporation, the outstanding stock of all classes (or equivalent interests) which ordinarily, in the absence of contingencies, entitles holders thereof to vote for the election of directors (or Persons performing similar functions) of such corporation, even though the right so to vote has been suspended by the happening of such contingency.

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

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

1.2 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns or, for natural persons, such Person's successors, heirs, executors, administrators and other legal representatives, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (f) all financial statements and other financial information provided by the Borrowers and each other member of the Borrower Affiliated Group to the Agent or any Lender shall be provided with reference to Dollars, and (g) this Agreement and the other Loan Documents are the result of negotiation among, and have been reviewed by counsel to, among others, the Borrower Affiliated Group and the Agent and are the product of discussions and negotiations among all parties. Accordingly, this Agreement and the other Loan Documents are not intended to be construed against the Agent or any of the Lenders merely on account of the Agent's or any Lender's involvement in the preparation of such documents.

1.3 Accounting Terms. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect on the Second Amendment Effective Date, on a basis consistent with the financial statements referred to in Section ~~3.4~~3.4 of this Agreement, provided that, if the Borrowers request an amendment to any provision hereof to reflect the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Agent notifies the Borrowers 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 provision shall have been amended in accordance herewith. Notwithstanding the foregoing, if at any time any change in GAAP, including any change effective after the Second Amendment Effective Date pursuant to accounting pronouncements promulgated prior to the Second Amendment Effective Date, and such changes may have an adverse impact on the Borrowers, the parties to this Agreement, shall negotiate in good faith to amend this Agreement to preserve the original intent thereof in light of such change in GAAP, provided that until so amended, (A) the applicable provisions of this Agreement shall continue to be computed and performed in accordance with GAAP prior to such change therein and (b) the Borrowers shall provide to the Agent financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations with respect to the applicable provisions made before and after giving effect to such

[change in GAAP](#). Notwithstanding the foregoing, any obligations of a Person under a lease (whether existing now or entered into in the future) that is not (or would not be) a Capital Lease Obligation under GAAP as in effect on the [Second Amendment](#) Effective Date, shall not be treated as a Capital Lease Obligation solely as a result of the adoption of changes in GAAP[ ~~outlined by the Financial Accounting Standards Board in its press release dated March 19, 2009~~]).

1.4 Rounding. Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

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

1.6 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to be the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit, whether or not such maximum face amount is in effect at such time.

## 2. AMOUNT AND TERMS OF CREDIT

### 2.1 Commitment of the Lenders.

(a) Each Lender severally and not jointly with any other Lender, agrees, upon the terms and subject to the conditions herein set forth, to extend credit to the Borrowers on a revolving basis, in the form of Revolving Loans and Letters of Credit and in an amount not to exceed the lesser of such Lender's Commitment or such Lender's Commitment Percentage of the Loan Cap, subject to the following limitations:

(i) The aggregate outstanding amount of the Credit Extensions shall not at any time exceed the Loan Cap.

(ii) No Lender shall be obligated to issue any Letter of Credit, and Letters of Credit shall be available from the Issuing Bank, subject to the ratable participation of all Lenders, as set forth in Section 2.6. The aggregate Letter of Credit Outstandings shall not at any time exceed \$50,000,000.

(iii) Subject to all of the other provisions of this Agreement, Revolving Loans that are repaid may be reborrowed prior to the Termination Date. No new extension of credit, however, shall be made to the Borrowers after the Termination Date.

(b) Each Borrowing of Revolving Loans (other than Swingline Loans) shall be made by the Lenders pro rata in accordance with their respective Commitments. The failure of any Lender to make any Loan shall neither relieve any other Lender of its obligation to fund its Loan

in accordance with the provisions of this Agreement nor increase the obligation of any such other Lender.

## 2.2 Reserves; Changes to Reserves.

(a) ~~[The]~~As of the Second Amendment Effective Date, the Inventory Reserves and Availability Reserves ~~[as of the Effective Date are the following:]~~

~~[(i)—Return to Vendor (an Inventory Reserve): An amount equal to the Cost of Inventory for which vendors are to furnish credit to the Borrower Affiliated Group as reflected in the Borrower Affiliated Group's books and records from time to time.]~~

~~[(ii)—Shrink (an Inventory Reserve): An amount equal to the one month accrual for Shrink reflected in the Borrower Affiliated Group's books and records from time to time.]~~

~~[(iii)—Defective and Refurbishment Parts (an Inventory Reserve): An amount equal to the amount of defective goods and goods at the refurbishment center for repair reflected in the Borrower Affiliated Group's books and records from time to time.]~~

~~[(iv)—Internal Warranties (an Inventory Reserve): An amount equal to the amount of internal warranties reflected in the cost of the Borrower Affiliated Group's Inventory from time to time.]~~

~~[(v)—Customer Credit Liabilities (an Availability Reserve): An amount equal to 30% of the amount of gift certificates and merchandise credits reflected in the Borrower Affiliated Group's books and records from time to time.]~~

~~[(vi)—Customer Deposits (an Availability Reserve): An amount equal to 30% of the outstanding customer deposits held by the Borrowers as reflected in the Borrowers' books and records.]~~

~~[(vii)—Rent (an Availability Reserve): An amount equal to one month's rent for each location in the States of Pennsylvania, Virginia, Washington and any other state which provides a lien for landlords which may have priority over the Agent's Lien (except for those locations for which the Agent has received a Collateral Access Agreement satisfactory in form to the Agent).]~~[(b) are set forth in the Borrowing Base Certificate delivered pursuant to Section 3(i) of the Second Amendment. The Agent may~~[ hereafter,]~~ on three (3) Business Days written notice to the Lead Borrower, establish additional Reserves or change any of the foregoing Reserves, in the exercise of the Permitted Discretion of the Agent (provided that no such prior notice shall be required if a Cash Dominion Event exists or for (1) changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously utilized

(such as, but not limited to, ~~[R]~~ent and Customer Credit Liabilities), or (2) changes to Reserves or establishment of additional Reserves if a Material Adverse Effect has occurred or it would be reasonably likely that a Material Adverse Effect to the Lenders would occur were such Reserve not changed or established prior to the expiration of such three (3) Business Day period); provided, however, that as long as no Event of Default then exists and is continuing, the Agent shall not modify the methodology in which Reserves described in Section 2.2(a) hereof are determined from time to time.

### 2.3 Making of Loans.

(a) Except as set forth in Sections 2.16 and 2.24, Loans (other than Swingline Loans) by the Lenders shall be either Prime Rate Loans or LIBOR Loans as the Lead Borrower on behalf of the Borrowers may request subject to and in accordance with this Section 2.3, provided that all Swingline Loans shall be only Prime Rate Loans. All Loans made pursuant to the same Borrowing shall, unless otherwise specifically provided herein, be Loans of the same Type. Each Lender may fulfill its Commitment with respect to any Loan by causing any lending office of such Lender to make such Loan; but any such use of a lending office shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of the applicable Note. Each Lender shall, subject to its overall policy considerations, use reasonable efforts (but shall not be obligated) to select a lending office which will not result in the payment of increased costs by the Borrowers pursuant to Section 2.23. Subject to the other provisions of this Section 2.3 and the provisions of Section 2.24, Borrowings of Loans of more than one Type may be incurred at the same time, but no more than seven (7) Borrowings of LIBOR Loans may be outstanding at any time.

(b) The Lead Borrower shall give the Agent three (3) Business Days' prior telephonic notice (thereafter confirmed in writing) of each LIBOR Borrowing and one (1) Business Day's prior notice of each Borrowing of Prime Rate Loans. Any such notice, to be effective, must be received by the Agent not later than 11:00 a.m. on the third Business Day in the case of LIBOR Loans prior to, and on the first Business Day in the case of Prime Rate Loans prior to, the date on which such Borrowing is to be made. Such notice shall be irrevocable and shall specify the amount of the proposed Borrowing (which shall be in an integral multiple of \$100,000, but not less than \$1,000,000 in the case of LIBOR Loans) and the date thereof (which shall be a Business Day) and shall contain disbursement instructions. Such notice shall specify whether the Borrowing then being requested is to be a Borrowing of Prime Rate Loans or LIBOR Loans and, if LIBOR Loans, the Interest Period with respect thereto. If no election of Interest Period is specified in any such notice for a Borrowing of LIBOR Loans, such notice shall be deemed a request for an Interest Period of one month. If no election is made as to the Type of Loan, such notice shall be deemed a request for a Borrowing of Prime Rate Loans. The Agent shall promptly notify each Lender of its proportionate share of such Borrowing, the date of such Borrowing, the Type of Borrowing being requested and the Interest Period or Interest Periods applicable thereto, as appropriate. On the borrowing date specified in such notice, each Lender shall make its share of the Borrowing available at the office of the Agent at 100 Federal Street, Boston, Massachusetts 02110, no later than 12:00 noon, in immediately available funds. Unless the Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Agent

such Lender's share of such Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with this Section and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Agent, then the applicable Lender and the Borrowers severally agree to pay to the Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Agent, at (i) in the case of such Lender, the Federal Funds Effective Rate or (ii) in the case of the Borrowers, the interest rate applicable to Prime Rate Loans. If such Lender pays such amount to the Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. Upon receipt of the funds made available by the Lenders to fund any Borrowing hereunder, the Agent shall disburse such funds in the manner specified in the notice of borrowing delivered by the Lead Borrower and shall use reasonable efforts to make the funds so received from the Lenders available to the Borrowers no later than 3:00 p.m.

(c) The Agent, without the request of the Lead Borrower, may advance any interest, fee, service charge, or other payment to which the Agent or its Affiliates or any Lender is entitled from any Borrower pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby. The Agent shall notify the Lead Borrower of any such advance or charge no later than one Business Day prior to the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and each Borrower's obligations under Section ~~[2.4]~~2.4. Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.3(c) shall bear interest at the interest rate then and thereafter applicable to Prime Rate Loans.

#### 2.4 Overadvances.

(a) The Agent and the Lenders have no obligation to make any Loan or to provide any Letter of Credit if an Overadvance would result.

(b) The Agent may, in its discretion, make Permitted Overadvances without the consent of the Lenders and each Lender shall be bound thereby. Any Permitted Overadvances may constitute Swingline Loans. The making of any Permitted Overadvance is for the benefit of the Borrowers; such Permitted Overadvances constitute Revolving Loans and Obligations. The making of any such Permitted Overadvances on any one occasion shall not obligate the Agent or any Lender to make or permit any Permitted Overadvances on any other occasion or to permit such Permitted Overadvances to remain outstanding.

(c) The making by the Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of Section ~~[2.6(f)]~~2.6(f) regarding the Lenders' obligations to purchase participations with respect to L/C Disbursements or Section ~~[2.7]~~2.7 regarding any Lender's reimbursement obligations with respect to Swingline Loans.

## 2.5 Swingline Loans.

(a) [ ]The Swingline Lender is authorized by the Lenders and shall, subject to the provisions of this Section, make Swingline Loans up to \$25,000,000 in the aggregate outstanding at any time consisting only of Prime Rate Loans, upon a notice of Borrowing received by the Agent and the Swingline Lender (which notice, at the Swingline Lender[']s discretion, may be submitted prior to 1:00 p.m. on the Business Day on which such Swingline Loan is requested); provided that the Swingline Lender shall not be obligated to make any Swingline Loan in its reasonable discretion if any Lender at such time is a Defaulting Lender, unless the Swingline Lender has entered into satisfactory arrangements with the Borrowers or such Lender to eliminate the Swingline Lender's Fronting Exposure with respect to such Swingline Loan. Swingline Loans shall be subject to periodic settlement with the Lenders under Section 2.7 below.

(b) [ ]Swingline Loans may be made only in the following circumstances: (A) for administrative convenience, the Swingline Lender shall, at the Lead Borrower's request, make Swingline Loans in reliance upon the Borrowers' actual or deemed representations under Section 4.2, that the applicable conditions for borrowing are satisfied or (B) for Permitted Overadvances. If the conditions for borrowing under Section 4.2 cannot be fulfilled, the Lead Borrower shall give immediate notice thereof to the Agent and the Swingline Lender (a "Noncompliance Notice"), and the Agent shall promptly provide each Lender with a copy of the Noncompliance Notice. If the conditions for borrowing under Section 4.2 cannot be fulfilled, the Required Lenders may direct the Swingline Lender to, and the Swingline Lender thereupon shall, cease making Swingline Loans (other than Permitted Overadvances) until such conditions can be satisfied or are waived in accordance with Section 9.2. Unless the Required Lenders so direct the Swingline Lender, the Swingline Lender may, but is not obligated to, continue to make Swingline Loans beginning one Business Day after the Non-Compliance Notice is furnished to the Lenders. Notwithstanding the foregoing, no Swingline Loans shall be made pursuant to this subsection (b) (other than Permitted Overadvances) if the aggregate outstanding amount of the Credit Extensions would exceed the Loan Cap.

## 2.6 Letters of Credit.

(a) Upon the terms and subject to the conditions herein set forth, the Lead Borrower on behalf of the Borrowers, may request the Issuing Bank, at any time and from time to time after the [~~date hereof~~ Effective Date] and prior to the Termination Date, to issue, and subject to the terms and conditions contained herein, the Issuing Bank shall issue, for the account of the relevant Borrower, one or more Letters of Credit; provided that no Letter of Credit shall be issued if after giving effect to such issuance (i) the aggregate Letter of Credit Outstandings shall exceed \$50,000,000, or (ii) the aggregate Credit Extensions would exceed the Loan Cap; and provided, further, that no Letter of Credit shall be issued if the Issuing Bank shall have received notice from the Agent or the Required Lenders that the conditions to such issuance have not been met; and provided further that the Issuing Bank shall not be required to issue any such Letter of Credit in its reasonable discretion if: (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Applicable Law relating to the Issuing Bank or any request or directive (whether

or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Issuing Bank in good faith deems material to it, (B) the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally, or (C) any Lender is at such time a Defaulting Lender hereunder, unless the Issuing Bank has entered into satisfactory arrangements with the Borrowers or such Lender to eliminate the Issuing Bank's Fronting Exposure with respect to such Letter of Credit. Any Issuing Bank (other than Bank of America) shall notify the Agent in writing on each Business Day of all Letters of Credit issued on the prior Business Day by such Issuing Bank, provided that (A) until the Agent advises any such Issuing Bank that the provisions of Section ~~4.2~~4.2 are not satisfied, or (B) the aggregate amount of the Letters of Credit issued in any such week exceeds such amount as shall be agreed by the Agent and the Issuing Bank, such Issuing Bank shall be required to so notify the Agent in writing only once each week of the Letters of Credit issued by such Issuing Bank during the immediately preceding week as well as the daily amounts outstanding for the prior week, such notice to be furnished on such day of the week as the Agent and such Issuing Bank may agree.

(b) Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five (5) Business Days prior to the Maturity Date, provided that each Letter of Credit may, upon the request of the Lead Borrower, include a provision whereby such Letter of Credit shall be renewed automatically for additional consecutive periods of twelve (12) months or less (but not beyond the date that is five (5) Business Days prior to the Maturity Date) unless the Issuing Bank which issued such Letter of Credit notifies the beneficiary thereof at least thirty (30) days prior to the then-applicable expiration date that such Letter of Credit will not be renewed.

(c) Drafts drawn under any Letter of Credit shall be reimbursed by the Borrowers in dollars on the same Business Day of any such payment thereof by the Issuing Bank by paying to the Agent an amount equal to such drawing (together with interest as provided in Section 2.6(e)) not later than 12:00 noon on (i) the date that the Lead Borrower shall have received notice of such drawing, if such notice is received prior to 10:00 a.m., on such date, or (ii) the Business Day immediately following the day that the Lead Borrower receives such notice, if such notice is received after 10:00 a.m. on the day of drawing, provided that the Lead Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.3 or ~~2.5~~2.5 that such payment be financed with a Revolving Loan consisting of a Prime Rate Loan, or a Swingline Loan in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment shall be discharged and replaced by the resulting Prime Rate Loan or Swingline Loan. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit issued by the Issuing Bank. The Issuing Bank shall promptly notify the Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make payment thereunder (which

payment shall not be made until two (2) Business Days after such notice from the Issuing Bank to the Borrower), provided that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse the Issuing Bank and the Lenders with respect to any such payment.

(d) If the Issuing Bank shall make any L/C Disbursement, then, unless the Borrowers shall reimburse the Issuing Bank in full on the date such payment is made, the unpaid amount thereof shall bear interest, for each day from and including the date such payment is made to but excluding the date that the Borrowers reimburse the Issuing Bank therefor, at the rate per annum then applicable to Prime Rate Loans, provided that if the Borrowers fail to reimburse the Issuing Bank when due pursuant to paragraph ~~(e)~~(c) of this Section, then Section 2.10 shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph ~~(e)~~(f) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(e) Immediately upon the issuance of any Letter of Credit by the Issuing Bank (or the amendment of a Letter of Credit increasing the amount thereof), and without any further action on the part of the Issuing Bank, the Issuing Bank shall be deemed to have sold to each Lender, and each such Lender shall be deemed unconditionally and irrevocably to have purchased from the Issuing Bank, without recourse or warranty, an undivided interest and participation, to the extent of such Lender's Commitment Percentage, in such Letter of Credit, each drawing thereunder and the obligations of the Borrowers under this Agreement and the other Loan Documents with respect thereto. Upon any change in the Commitments pursuant to Section 2.15, ~~2.29~~2.29, 2.30 and/or 9.5, it is hereby agreed that with respect to all Letter of Credit Outstandings, there shall be an automatic adjustment to the participations hereby created to reflect the new Commitment Percentages of the assigning and assignee Lenders. Any action taken or omitted by the Issuing Bank under or in connection with a Letter of Credit issued by the Issuing Bank, if taken or omitted in the absence of gross negligence, bad faith or willful misconduct, shall not create for the Issuing Bank any resulting liability to any Lender.

(f) In the event that the Issuing Bank makes any L/C Disbursement and the Borrowers shall not have reimbursed such amount in full to the Issuing Bank pursuant to Section 2.6(c), the Issuing Bank shall promptly notify the Agent, which shall promptly notify each Lender of such failure, and each Lender shall promptly and unconditionally pay to the Agent for the account of the Issuing Bank the amount of such Lender's Commitment Percentage of such unreimbursed payment in dollars and in same day funds. If the Issuing Bank so notifies the Agent, and the Agent so notifies the Lenders prior to 11:00 a.m., on any Business Day, each such Lender shall make available to the Issuing Bank such Lender's Commitment Percentage of the amount of such payment on such Business Day in same day funds (or if such notice is received by the Lenders after 11:00 a.m. on the day of receipt, payment shall be made on the immediately following Business Day). If and to the extent such Lender shall not have so made its Commitment Percentage of the amount of such payment available to the Issuing Bank, such Lender agrees to pay to the Issuing Bank, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent for the account of the Issuing Bank at the Federal Funds Effective

Rate. Each Lender agrees to fund its Commitment Percentage of such unreimbursed payment notwithstanding a failure to satisfy any applicable lending conditions or the provisions of Sections ~~[2.3]~~2.3 or 2.6, or the occurrence of the Termination Date. The failure of any Lender to make available to the Issuing Bank its Commitment Percentage of any payment under any Letter of Credit shall neither relieve any Lender of its obligation hereunder to make available to the Issuing Bank its Commitment Percentage of any payment under any Letter of Credit on the date required, as specified above, nor increase the obligation of such other Lender. Whenever any Lender has made payments to the Issuing Bank in respect of any reimbursement obligation for any Letter of Credit, such Lender shall be entitled to share ratably, based on its Commitment Percentage, in all payments and collections thereafter received on account of such reimbursement obligation.

(g) Whenever any Borrower desires that the Issuing Bank issue a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Lead Borrower shall give to the Issuing Bank and the Agent at least two (2) Business Days' prior written (including telegraphic, telex, facsimile or cable communication) notice (or such shorter period as may be agreed upon in writing by the Issuing Bank and Borrower) specifying the date on which the proposed Letter of Credit is to be issued, amended, renewed or extended (which shall be a Business Day), the stated amount of the Letter of Credit so requested, the expiration date of such Letter of Credit, the name and address of the beneficiary thereof, and the provisions thereof. If requested by the Issuing Bank, the applicable Borrower shall also submit a letter of credit application on the Issuing Bank's standard form in connection with any request for the issuance, amendment, renewal or extension of a Letter of Credit.

(h) The obligations of the Borrowers to reimburse the Issuing Bank for any L/C Disbursement shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, setoff, defense or other right which the Borrowers may have at any time against a beneficiary of any Letter of Credit or against the Issuing Bank or any of the Lenders, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction; (iii) any draft, demand, certificate or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment by the Issuing Bank of any Letter of Credit issued by the Issuing Bank against presentation of a demand, draft or certificate or other document which does not comply with the terms of such Letter of Credit; (v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrowers' obligations hereunder; or (vi) the fact that any Event of Default shall have occurred and be continuing. None of the Agent, the Lenders, the Issuing Bank or any of their Affiliates shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank, provided that the foregoing

shall not be construed to excuse the Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by Applicable Law) suffered by the Borrowers that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(i) If any Event of Default shall occur and be continuing, on the Business Day that the Lead Borrower receives notice from the Agent or the Required Lenders demanding the deposit of cash collateral pursuant to this paragraph, the Borrowers shall deposit in the Cash Collateral Account an amount in cash equal to 105% of the Letter of Credit Outstandings as of such date plus any accrued and unpaid interest thereon. Each such deposit shall be held by the Agent as collateral for the payment and performance of the Obligations of the Borrowers under this Agreement. The Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such Cash Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Agent at the request of the Lead Borrower and at the Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such Cash Collateral Account shall be applied by the Agent to reimburse the Issuing Bank for payments on account of drawings under Letters of Credit for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the Letter of Credit Outstandings at such time or, if the Loans have matured or the maturity of the Loans has been accelerated, be applied to satisfy other Obligations of the Borrowers under this Agreement.

## 2.7 Settlements Amongst Lenders.

(a) The Swingline Lender may, at any time, and shall, not less frequently than weekly, on behalf of the Borrowers (which hereby authorize the Swingline Lender to act in their behalf in that regard) request the Agent to cause the Lenders to make a Revolving Loan (which shall be a Prime Rate Loan) in an amount equal to such Lender's Commitment Percentage of the outstanding amount of Swingline Loans made in accordance with Section 2.5, which request may be made regardless of whether the conditions set forth in Section 4 have been satisfied. Upon such request, each Lender shall make available to the Agent the proceeds of such Revolving Loan for the account of the Swingline Lender. If the Swingline Lender requires a Revolving Loan to be made by the Lenders and the request therefor is received prior to 12:00 Noon, on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if the request therefor is received after 12:00 Noon, then no later than 3:00 p.m. on the next Business Day.

The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent or the Swingline Lender. If and to the extent any Lender shall not have so made its transfer to the Agent, such Lender agrees to pay to the Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent at the Federal Funds Effective Rate.

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

(c) The Agent shall deliver to each of the Lenders promptly after the Settlement Date a summary statement of the amount of outstanding Revolving Loans for the period and the amount of repayments received for the period. As reflected on the summary statement: each Lender shall transfer to the Agent (as provided below), or the Agent shall transfer to each Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Lender shall be equal to such Lender's applicable Commitment Percentage of Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Agent by the Lenders and is received prior to 12:00 Noon on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 12:00 Noon, then no later than 3:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent. If and to the extent any Lender shall not have so made its transfer to the Agent, such Lender agrees to pay to the Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent at the Federal Funds Effective Rate.

## 2.8 Notes; Repayment of Loans.

(a) Upon the request of a Lender or the Swingline Lender, as applicable, the Loans made by each Lender (and to the Swingline Lender, with respect to Swingline Loans) shall be evidenced by a Note duly executed on behalf of the Borrowers, dated the Effective Date, in substantially the form attached hereto as Exhibit B-1 or Exhibit B-2, as applicable, payable to the order of each such Lender (or the Swingline Lender, as applicable) in an aggregate principal amount equal to such Lender's Commitment (or, in the case of the Note evidencing the Swingline Loans, \$25,000,000).

(b) [ ]Each Lender is hereby authorized by the Borrower to endorse on a schedule attached to each Note delivered to such Lender (or on a continuation of such schedule attached to such Note and made a part thereof), or otherwise to record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, each payment of interest on any such Loan and the other information provided for on such schedule; provided, however, that the failure of any Lender to make such a notation or any error therein shall not affect the obligation of the Borrowers to repay the Loans made by such Lender in accordance with the terms of this Agreement and the applicable Notes.

(c) Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and an indemnity in form and substance reasonably satisfactory to the Lead Borrower, and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

## 2.9 Interest on Loans.

(a) Subject to Section 2.10, each Prime Rate Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as applicable) at a rate per annum that shall be equal to the then Prime Rate, plus the Applicable Margin for Prime Rate Loans.

(b) Subject to Section 2.10, each LIBOR Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as applicable) at a rate per annum equal, during each Interest Period applicable thereto, to the Adjusted LIBOR Rate for such Interest Period, plus the Applicable Margin for LIBOR Loans.

(c) Accrued interest on all Loans shall be payable in arrears on each Interest Payment Date applicable thereto, on the Termination Date, after the Termination Date on demand and (with respect to LIBOR Loans) upon any repayment or prepayment thereof (on the amount prepaid).

2.10 Default Interest. Effective upon the occurrence of any Event of Default and at all times thereafter while such Event of Default is continuing, at the option of the Agent or upon the direction of the Required Lenders, interest shall accrue on all outstanding Loans (including Swingline Loans) (after as well as before judgment, as and to the extent permitted by law), and all fees payable under Sections ~~[2.12]~~2.12 and ~~[2.13]~~2.13 shall accrue, at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as applicable) equal to the rate (including the Applicable Margin) in effect from time to time plus 2.00% per annum (the "Default Rate"), and such interest shall be payable on demand.

2.11 Certain Fees. The Borrowers shall pay to ~~[the Arranger]~~MLPFS, for the account ~~[of the Arranger]~~MLPFS, and to the Agent, for the account of the Agent and the Lenders, the fees set forth in the Fee Letter as and when payment of such fees is due as therein set forth.

2.12 Unused Commitment Fee. The Borrowers shall pay to the Agent for the account of the Lenders, a commitment fee (the "Commitment Fee") equal to 0.25% per annum (on the basis of actual days elapsed in a year of 365 or 366 days, as applicable) *multiplied by* the actual daily balance of the Unused Commitment for each day commencing on and including the Effective Date and ending on but excluding the Termination Date. Upon the occurrence of an Event of Default, at the option of the Agent or at the direction of the Required Lenders, the Commitment Fee shall be determined at the rate set forth in Section ~~[2.10]~~2.10. The Commitment Fee so accrued in any calendar quarter shall be payable on the first day of the next calendar quarter, in arrears, except that all Commitment Fees so accrued as of the Termination Date shall be payable on the Termination Date. The Agent shall pay the Commitment Fee to the Lenders based upon their Commitment Percentage.

2.13 Letter of Credit Fees. The Borrowers shall pay the Agent, for the account of the Lenders, on the first day of the next calendar quarter, in arrears, a fee (each, a “Letter of Credit Fee”) equal to the following per annum percentages of the face amount of the following categories of Letters of Credit outstanding during the subject quarter:

(a) Each Standby Letter of Credit: At the then Applicable Margin per annum for LIBOR Loans.

(b) Each Commercial Letter of Credit and Banker's Acceptance: Fifty percent (50%) of the Applicable Margin per annum for LIBOR Loans.

(c) After the occurrence and during the continuance of an Event of Default, at the option of the Agent or upon the direction of the Required Lenders, the Letter of Credit Fee set forth in clauses (a) and (b) above, shall be increased by an amount equal to two percent (2%) per annum.

(d) The Borrowers shall pay to the Issuing Bank, in addition to all Letter of Credit Fees otherwise provided for hereunder, a fronting fee (each a “Fronting Fee”) in an amount equal to 0.125% of the face amount of each Letter of Credit payable on the issuance of such Letter of Credit.

(e) The Borrowers shall pay to the Issuing Bank, in addition to the Letter of Credit Fees and Fronting Fees otherwise provided for hereunder, fees and charges in connection with the issuance, negotiation, settlement, amendment and processing of each Letter of Credit issued by the Issuing Bank as are customarily imposed by the Issuing Bank from time to time in connection with letter of credit transactions.

(f) All Letter of Credit Fees shall be calculated on the basis of actual days elapsed in a year of 365 or 366 days, as applicable.

2.14 Nature of Fees. All fees shall be paid on the dates due, in immediately available funds, to the Agent, for the respective accounts of the Agent, the Issuing Banks, and the Lenders, as provided herein. All fees shall be fully earned on the date when due and shall not be refundable under any circumstances.

2.15 Termination or Reduction of Commitments.

(a) Upon at least three (3) Business Days' prior written notice to the Agent, the Lead Borrower may at any time or from time to time in part permanently reduce the Commitments. Each such reduction shall be in the principal amount of \$2,500,000 or any integral multiple of \$1,000,000 in excess thereof. Each such reduction shall (i) be applied ratably to the Commitments of each Lender and (ii) be irrevocable when given. At the effective time of each such reduction, the Borrowers shall pay to the Agent for application as provided herein (i) all Commitment Fees accrued on the amount of the Commitments so reduced through the date thereof, (ii) any amount by which the Credit Extensions outstanding on such date exceed the amount to which the Commitments are to be reduced effective on such date, in each case pro rata based on the amount prepaid, and (iii) any Breakage Costs, if applicable.

(b) Upon at least three (3) Business Days' prior written notice to the Agent, the Lead Borrower may at any time terminate the Commitments. At the effective time of each such termination specified in such notice, the Borrowers shall repay to the Agent for application as provided herein all Obligations.

2.16 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a LIBOR Borrowing:

(a) the Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate for such Interest Period; or

(b) the Agent is advised by the Required Lenders that the Adjusted LIBOR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Agent shall give notice thereof to the Lead Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter (but in any event, within two (2) Business Days) and, until the Agent notifies the Lead Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Borrowing Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a LIBOR Borrowing shall be ineffective and (ii) if any Borrowing Request requests a LIBOR Borrowing, such Borrowing shall be made as a Borrowing of Prime Rate Loans.

2.17 Conversion and Continuation of Loans. The Lead Borrower on behalf of the Borrowers shall have the right at any time,

(a) on three (3) Business Days' prior irrevocable notice to the Agent (which notice, to be effective, must be received by the Agent not later than 11:00 a.m. on the third Business Day preceding the date of any conversion), (x) to convert any outstanding Borrowings of Prime Rate Loans (but in no event Swingline Loans) to Borrowings of LIBOR Loans, or (y) to continue an outstanding Borrowing of LIBOR Loans for an additional Interest Period,

(b) on one Business Day's irrevocable notice to the Agent (which notice, to be effective, must be received by the Agent not later than 11:00 a.m. on the date of any conversion), to convert any outstanding Borrowings of LIBOR Loans to a Borrowing of Prime Rate Loans, subject to the following:

(i) no Borrowing of Loans may be converted into, or continued as, LIBOR Loans at any time when an Event of Default has occurred and is continuing;

(ii) if less than a full Borrowing of Loans is converted, such conversion shall be made pro rata among the Lenders, as applicable, in accordance with the respective principal amounts of the Loans comprising such Borrowing held by such Lenders immediately prior to such conversion;

(iii) the aggregate principal amount of Loans being converted into or continued as LIBOR Loans shall be in an integral of \$100,000 and at least \$1,000,000;

(iv) each Lender shall effect each conversion by applying the proceeds of its new LIBOR Loan or Prime Rate Loan, as the case may be, to its Loan being so converted;

(v) the Interest Period with respect to a Borrowing of LIBOR Loans effected by a conversion or in respect to the Borrowing of LIBOR Loans being continued as LIBOR Loans shall commence on the date of conversion or the expiration of the current Interest Period applicable to such continued Borrowing, as the case may be;

(vi) a Borrowing of LIBOR Loans may be converted only on the last day of an Interest Period applicable thereto;

(vii) each request for a conversion or continuation of a Borrowing of LIBOR Loans which fails to state an applicable Interest Period shall be deemed to be a request for an Interest Period of one month; and

(viii) no more than seven (7) Borrowings of LIBOR Loans may be outstanding at any time.

If the Lead Borrower does not give notice to convert any Borrowing of Prime Rate Loans, or does not give notice to continue, or does not have the right to continue, any Borrowing as LIBOR Loans, in each case as provided above, such Borrowing shall automatically be converted to, or continued as, as applicable, a Borrowing of Prime Rate Loans at the expiration of the then current Interest Period. The Agent shall, after it receives notice from the Borrower, promptly give each Lender notice of any conversion, in whole or part, of any Loan made by such Lender.

2.18 Mandatory Prepayment; Cash Collateral; Commitment Termination. The outstanding Obligations shall be subject to mandatory prepayment as follows:

(a) If at any time the amount of the Credit Extensions exceeds the Loan Cap, the Borrowers will immediately upon notice from the Agent (A) prepay the Loans in an amount necessary to eliminate such excess, and (B) if, after giving effect to the prepayment in full of all outstanding Loans such excess has not been eliminated, deposit cash into the Cash Collateral Account in an amount equal to 105% of the Letters of Credit Outstanding.

(b) To the extent required pursuant to Section 2.21, the Revolving Loans shall be repaid daily in accordance with the provisions of said Section 2.21.

(c) ~~[The Borrowers shall prepay the Revolving Loans, and the Agent may, in its reasonable discretion, require the Borrowers to cash collateralize the Letter of Credit Outstandings, in an amount equal to the net proceeds received by a Borrower or Facility Guarantor on account of a Prepayment Event, irrespective of whether a Cash Dominion Event then exists and is continuing.]~~ [Reserved].

(d) Subject to the foregoing, outstanding Prime Rate Loans shall be prepaid before outstanding LIBOR Loans are prepaid. Each partial prepayment of LIBOR Loans shall be in an integral multiple of \$1,000,000. No prepayment of LIBOR Loans shall be permitted pursuant to this Section 2.18 other than on the last day of an Interest Period applicable thereto, unless the Borrowers simultaneously reimburse the Lenders for all "Breakage Costs" (as defined below) associated therewith. In order to avoid such Breakage Costs, as long as no Event of Default has occurred and is continuing, at the request of the Lead Borrower, the Agent shall hold all amounts required to be applied to LIBOR Loans in the Cash Collateral Account and will apply such funds to the applicable LIBOR Loans at the end of the then pending Interest Period therefor and such LIBOR Loans shall continue to bear interest at the rate set forth in Section 2.9 until the amounts in the Cash Collateral Account have been so applied (provided that the foregoing shall in no way limit or restrict the Agent's rights upon the subsequent occurrence of an Event of Default). No partial prepayment of a Borrowing of LIBOR Loans shall result in the aggregate principal amount of the LIBOR Loans remaining outstanding pursuant to such Borrowing being less than \$1,000,000 (unless all such outstanding LIBOR Loans are being prepaid in full). Any prepayment of the Revolving Loans shall not permanently reduce the Commitments.

(e) All amounts required to be applied to all Loans hereunder (other than Swingline Loans) shall be applied ratably in accordance with each Lender's Commitment Percentage.

(f) Upon the Termination Date, the Commitments and the credit facility provided hereunder shall be terminated in full and the Borrowers shall pay, in full and in cash, all outstanding Loans and all other outstanding Obligations.

#### 2.19 Optional Prepayment of Loans; Reimbursement of Lenders.

(a) The Borrowers shall have the right at any time and from time to time to prepay outstanding Loans in whole or in part, (x) with respect to LIBOR Loans, upon at least two Business Days' prior written, telex or facsimile notice to the Agent prior to 11:00 a.m., and (y) with respect to Prime Rate Loans, upon at least one Business Day prior written, telex or facsimile notice to the Agent prior to 11:00 p.m., subject to the following limitations:

(i) All prepayments under this Section 2.19 shall be paid to the Agent for application, first, to the prepayment of outstanding Swingline Loans, second, to the prepayment of other outstanding Loans ratably in accordance with each Lender's Commitment Percentage, and third, to the funding of a cash collateral deposit in the Cash Collateral Account in an amount equal to 105% of all Letter of Credit Outstandings.

(ii) Subject to the foregoing, outstanding Prime Rate Loans shall be prepaid before outstanding LIBOR Loans are prepaid. Each partial prepayment of LIBOR Loans shall be in an integral multiple of \$1,000,000. No prepayment of LIBOR Loans shall be permitted pursuant to this Section 2.19 other than on the last day of an Interest Period applicable thereto, unless the Borrowers simultaneously reimburse the Lenders for all "Breakage Costs" (as defined below) associated therewith. No partial prepayment of a Borrowing of LIBOR Loans shall result in the aggregate principal amount of the LIBOR Loans remaining outstanding pursuant to such

Borrowing being less than \$1,000,000 (unless all such outstanding LIBOR Loans are being prepaid in full).

(iii) Each notice of prepayment shall specify the prepayment date, the principal amount and Type of the Loans to be prepaid and, in the case of LIBOR Loans, the Borrowing or Borrowings pursuant to which such Loans were made. Each notice of prepayment shall be irrevocable and shall commit the Borrowers to prepay such Loan by the amount and on the date stated therein. The Agent shall, promptly after receiving notice from the Lead Borrower hereunder, notify each Lender of the principal amount and Type of the Loans held by such Lender which are to be prepaid, the prepayment date and the manner of application of the prepayment.

(b) The Borrowers shall reimburse each Lender on demand for any loss incurred or to be incurred by it in the reemployment of the funds released (i) resulting from any prepayment (for any reason whatsoever, including, without limitation, conversion to Prime Rate Loans or acceleration by virtue of, and after, the occurrence of an Event of Default) of any LIBOR Loan required or permitted under this Agreement, if such Loan is prepaid other than on the last day of the Interest Period for such Loan or (ii) in the event that after the Lead Borrower delivers a notice of borrowing under Section 2.3 in respect of LIBOR Loans, such Loans are not borrowed on the first day of the Interest Period specified in such notice of borrowing for any reason. Such loss shall be the amount as reasonably determined by such Lender as the excess, if any, of (A) the amount of interest which would have accrued to such Lender on the amount so paid or not borrowed at a rate of interest equal to the Adjusted LIBOR Rate for such Loan, for the period from the date of such payment or failure to borrow to the last day (x) in the case of a payment or refinancing of a LIBOR Loan other than on the last day of the Interest Period for such Loan, of the then current Interest Period for such Loan or (y) in the case of such failure to borrow, of the Interest Period for such LIBOR Loan which would have commenced on the date of such failure to borrow, over (B) the amount of interest which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the London interbank market (collectively, "Breakage Costs"). Any Lender demanding reimbursement for such loss shall deliver to the Lead Borrower from time to time one or more certificates setting forth the amount of such loss as determined by such Lender and setting forth in reasonable detail the manner in which such amount was determined.

(c) In the event the Borrowers fail to prepay any Loan on the date specified in any prepayment notice delivered pursuant to Section 2.19(a), the Borrowers on demand by any Lender shall pay to the Agent for the account of such Lender any amounts required to compensate such Lender for any actual loss incurred by such Lender as a result of such failure to prepay, including, without limitation, any loss, cost or expenses incurred by reason of the acquisition of deposits or other funds by such Lender to fulfill deposit obligations incurred in anticipation of such prepayment. Any Lender demanding such payment shall deliver to the Lead Borrower from time to time one or more certificates setting forth the amount of such loss as determined by such Lender and setting forth in reasonable detail the manner in which such amount was determined.

(d) Whenever any partial prepayment of Loans ~~are~~is to be applied to LIBOR Loans, such LIBOR Loans shall be prepaid in the chronological order of their Interest Payment Dates.

#### 2.20 Maintenance of Loan Account; Statements of Account.

(a) The Agent shall maintain an account on its books in the name of the Borrowers (the "Loan Account") which will reflect (i) all Loans and other advances made by the Lenders to the Borrowers or for the Borrowers' account, (ii) all L/C Disbursements, fees and interest that have become payable as herein set forth, and (iii) any and all other monetary Obligations that have become payable.

(b) The Loan Account will be credited with all amounts received by the Agent from the Borrowers or otherwise for the Borrowers' account, including all amounts received in the Bank of America Concentration Account from the Blocked Account Banks, and the amounts so credited shall be applied as set forth in Sections ~~2.22(a)~~2.23(a) and (b) After the end of each month, the Agent shall send to the Lead Borrower a statement accounting for the charges, loans, advances and other transactions occurring among and between the Agent, the Lenders and the Borrowers during that month. The monthly statements shall, absent manifest error, be an account stated, which is final, conclusive and binding on the Borrowers.

#### 2.21 Cash Receipts.

(a) At the request of the Agent, ~~the Borrowers shall deliver to the Agent (i)~~ the Borrowers shall deliver to the Agent (i) at any time after the occurrence and during the continuance of a Cash Dominion Event, ~~the Borrowers shall deliver to the Agent (i)~~ a list of all present DDAs maintained by the Borrowers, which list includes, with respect to each depository (A) the name and address of that depository; (B) the account number(s) maintained with such depository; and (C) to the extent known, a contact person at such depository (the "DDA List"), (ii) at any time after the occurrence and during the continuance of a Cash Dominion Event, notifications executed on behalf of the Borrowers to each depository institution identified on the DDA List in form and substance reasonably satisfactory to the Agent, of the Agent's interest in such DDA (each, a "DDA Notification"), and (iii) on the Second Amendment Effective Date, notifications (the "Credit Card Notifications") executed on behalf of the Borrowers with each of the Borrowers' major credit card processors in form and substance reasonably satisfactory to the Agent; provided that the Agent shall deliver the Credit Card Notifications to the Credit Card Processors only upon the occurrence and during the continuance of a Cash Dominion Event.

(b) Annexed hereto as Schedule ~~2.21(b)~~2.21(b) is a list describing all arrangements to which any Borrower is a party with respect to the payment to any Borrower of the proceeds of all credit card charges for sales by such Borrower.

(c) On or prior to the Second Amendment Effective, Date the Borrowers shall have entered into a Blocked Account Agreement with the Blocked Account Banks as set forth on Schedule 2.21(c) hereto in form and substance reasonably satisfactory to the Agent; it being understood and agreed that no Blocked Account Agreements shall be required in respect of any Excluded Accounts or Specified Accounts.

(d) The DDA Notifications and Credit Card Notifications shall require, after the occurrence and during the continuance of a Cash Dominion Event, the sweep on each Business Day of all available cash receipts and other proceeds from the sale or disposition of any Collateral, including, without limitation, the proceeds of all credit card charges (all such cash receipts and proceeds, "Cash Receipts"), to (x) a concentration account maintained by the Borrowers at Bank of America, which shall be a Blocked Account (the "Bank of America Concentration Account"), or (z) another Blocked Account, as the Agent may direct.

(e) The Blocked Account Agreements (other than the Blocked Account Agreement with respect to the Bank of America Concentration Account) shall require, after the occurrence and during the continuance of a Cash Dominion Event, the sweep on each Business Day of all Cash Receipts to the Bank of America Concentration Account or to such other account as the Agent may direct.

(f) If at any time after the occurrence and during the continuance of a Cash Dominion Event, any cash or cash equivalents owned by the Borrowers are deposited to any account, or held or invested in any manner, otherwise than in a Blocked Account that is subject to a Blocked Account Agreement as required herein, the Agent shall require the Borrowers to have all funds held in such account transferred to the Bank of America Concentration Account or such other Blocked Account daily or otherwise as the Agent may direct.

(g) The Borrowers may close DDAs or Blocked Accounts (other than the Bank of America Concentration Account) and/or open new DDAs or Blocked Accounts, subject to the execution and delivery to the Agent of appropriate DDA Notifications or Blocked Account Agreements consistent with the provisions of this Section 2.21. Unless consented to in writing by the Agent, the Borrowers may not enter into any agreements with additional credit card processors unless contemporaneously therewith, a Credit Card Notification is executed and delivered to the Agent.

(h) The Bank of America Concentration Account is and shall remain, a Blocked Account. Each Borrower acknowledges and agrees that, subject to the provisions of subparagraph ~~(i)~~(i) below, (i) such Borrower has no right of withdrawal from the Bank of America Concentration Account, (ii) the funds on deposit in the Bank of America Concentration Account shall continue to be collateral security for all of the Obligations and (iii) the funds on deposit in the Bank of America Concentration Account shall be applied as provided in Section 2.22(a).

(i) So long as no Cash Dominion Event has occurred and is continuing, the Borrowers may direct, and shall have sole control over, the manner of disposition of its funds in the DDA Accounts and the Blocked Accounts (other than the Bank of America Concentration Account).

(j) After the occurrence and during the continuation of a Cash Dominion Event, the Borrowers shall cause the ACH or wire transfer to, upon the Agent's instruction, any Blocked Account, no less frequently than daily (unless the Commitments have been terminated hereunder and the Obligations have been paid in full) of the then contents of each DDA, each such transfer to be net of any minimum balance, not to exceed \$10,000 with respect to any one DDA and \$250,000

in the aggregate for all DDAs, as may be required to be maintained in the subject DDA by the bank at which such DDA is maintained, and, in connection with each such transfer, the Borrowers shall also provide the Agent with an accounting of the contents of each DDA.

(k) After the occurrence and during the continuation of a Cash Dominion Event, whether or not any Obligations are then outstanding, the Borrowers shall cause the ACH or wire transfer, upon the Agent's instruction, to the Bank of America Concentration Account of the then entire balance of each Blocked Account (other than the Bank of America Concentration Account) available to the Borrowers, net of such minimum balance, not to exceed \$10,000, as may be required to be maintained in the subject Blocked Account by the bank at which such Blocked Account is maintained.

(l) In the event that, notwithstanding the provisions of this Section 2.21, after the occurrence of a Cash Dominion Event, the Borrowers receive or otherwise have dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by the Borrowers for the Agent and shall not be commingled with any of the Borrowers' other funds or deposited in any account of Borrower other than as instructed by the Agent.

## 2.22 Application of Payments.

(a) As long as the time for payment of the Obligations has not been accelerated and no Liquidation has commenced, all amounts received in the Bank of America Concentration Account from any source, including the Blocked Account Banks, and other amounts received by the Agent, shall be applied, on the day of receipt, in the following order: first, to pay any fees and expense reimbursements and indemnification then due and payable to the Agent and the Issuing Banks; second, to pay interest then due and payable on the Obligations; third, to repay any outstanding Swingline Loans; fourth, to repay any outstanding Revolving Loans that are Prime Rate Loans and any outstanding reimbursement obligations under Letters of Credit; fifth, to repay any outstanding Revolving Loans that are LIBOR Loans and all Breakage Costs due in respect of such repayment pursuant to Section 2.19(b) or, at the Lead Borrower's option, to fund a cash collateral deposit to the Cash Collateral Account sufficient to pay, and with direction to pay, all such outstanding LIBOR Loans on the last day of the then-pending Interest Period therefor from such Cash Collateral Account; sixth, if an Event of Default exists, to fund a cash collateral deposit in the Cash Collateral Account in an amount equal to 105% of all Letter of Credit Outstandings; seventh, to pay all other Obligations that are then outstanding and then due and payable. If all amounts set forth in clauses first through and including seventh above are paid, any excess amounts shall be deposited in a separate cash collateral account, and shall be released to the Lead Borrower on the day of receipt. So long as no Event of Default has occurred and is continuing, and, to the extent required by the Agent, in its reasonable discretion, upon the repayment of any outstanding Revolving Loans that are LIBOR Loans, the Agent shall release the funds held in the Cash Collateral Account pursuant to clause fifth above to the Borrowers upon the Lead Borrower's request.

(b) All credits against the Obligations shall be effective on the day of receipt thereof, and shall be conditioned upon final payment to the Agent of the items giving rise to such credits. If any item deposited to the Bank of America Concentration Account and credited to the Loan Account is dishonored or returned unpaid for any reason, whether or not such return is rightful

or timely, the Agent shall have the right to reverse such credit and charge the amount of such item to the Loan Account and the Borrowers shall indemnify the Agent, the Issuing Banks and the Lenders against all claims and losses resulting from such dishonor or return.

## 2.23 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any holding company of any Lender (except any such reserve requirement reflected in the Adjusted LIBOR Rate) or any Issuing Bank; or

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition affecting this Agreement or LIBOR Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any LIBOR Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise) other than Taxes, which shall be governed by Section 2.26 hereof, then the Borrowers will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital or liquidity of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy or liquidity), then from time to time the Borrowers will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph ~~(a)~~(a) or ~~(b)~~(b) of this Section and setting forth in reasonable detail the manner in which such amount or amounts were determined shall be delivered to the Lead Borrower and shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section within ninety (90) days of the effective date of the relevant Change in Law shall constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation.

#### 2.24 Change in Legality.

(a) Notwithstanding anything to the contrary contained elsewhere in this Agreement, if (x) any Change in Law shall make it unlawful for a Lender to make or maintain a LIBOR Loan or to give effect to its obligations as contemplated hereby with respect to a LIBOR Loan or (y) at any time any Lender determines that the making or continuance of any of its LIBOR Loans has become impracticable as a result of a contingency occurring after the ~~[date hereof]~~ Second Amendment Effective Date which adversely affects the London interbank market or the position of such Lender in the London interbank market, then, by written notice to the Lead Borrower, such Lender may (i) declare that LIBOR Loans will not thereafter be made by such Lender hereunder, whereupon any request by the Borrowers for a LIBOR Borrowing shall, as to such Lender only, be deemed a request for a Prime Rate Loan unless such declaration shall be subsequently withdrawn; and (ii) require that all outstanding LIBOR Loans made by it be converted to Prime Rate Loans, in which event all such LIBOR Loans shall be automatically converted to Prime Rate Loans as of the effective date of such notice as provided in paragraph (b) below. In the event any Lender shall exercise its rights under clause (i) or (ii) of this paragraph (a), all payments and prepayments of principal which would otherwise have been applied to repay the LIBOR Loans that would have been made by such Lender or the converted LIBOR Loans of such Lender shall instead be applied to repay the Prime Rate Loans made by such Lender in lieu of, or resulting from the conversion of, such LIBOR Loans.

(b) For purposes of this Section 2.24, a notice to the Lead Borrower by any Lender pursuant to paragraph (a) above shall be effective, and if any LIBOR Loans shall then be outstanding, on the last day of the then-current Interest Period; and otherwise such notice shall be effective on the date of receipt by the Lead Borrower.

#### 2.25 Payments; Sharing of Setoff.

(a) The Borrowers shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of drawings under Letters of Credit, or of amounts payable under Sections 2.19(b), 2.23 or 2.26, or otherwise) prior to 2:00 p.m. on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the 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 Agent at its offices at 100 Federal Street, Boston, Massachusetts, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.19(b), 2.23, 2.26 or 9.3 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document (other than payments with

respect to LIBOR Borrowings) shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, if any payment due with respect to LIBOR Borrowings shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, unless that succeeding Business Day is in the next calendar month, in which event, the date of such payment shall be on the last Business Day of subject calendar month, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Agent to pay fully all amounts of principal, unreimbursed drawings under Letters of Credit, interest and fees then due hereunder, such funds shall be applied ratably among the parties entitled thereto in accordance with the provisions of Section 2.22(a) or ~~7.3~~7.3 hereof, as applicable.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in drawings under Letters of Credit or Swingline Loans resulting in such Lender's receiving payment of a greater proportion of the aggregate amount of its Loans and participations in drawings under Letters of Credit and Swingline 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 and participations in drawings under Letters of Credit and Swingline 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 and participations in drawings under Letters of Credit and Swingline 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 shall not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in drawings under Letters of Credit to any assignee or participant, other than to the Borrowers or any Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrowers consent to the foregoing and agree, to the extent they may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrowers rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrowers in the amount of such participation.

(d) Unless the Agent shall have received notice from the Lead Borrower prior to the date on which any payment is due to the Agent for the account of the Lenders or an Issuing Bank hereunder that the Borrowers will not make such payment, the Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Agent forthwith on demand

the amount so distributed to such Lender or the Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the Federal Funds Effective Rate.

## 2.26 Taxes.

(a) Any and all payments by or on account of any obligation of the Borrowers hereunder or under any other Loan Document shall be made free and clear of and without deduction for any [~~Indemnified Taxes or Other Taxes, provided that if the Borrowers shall be required~~Taxes, except as required by Applicable Law. If any applicable law (as determined in the good faith discretion of the Borrowers) requires the Borrowers to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Agent, any Lender or the Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrowers shall make such deductions, and (iii) the Borrowers shall pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) In addition, the Borrowers shall pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) The Borrowers shall indemnify the Agent, each Lender and the Issuing Bank, within ten (10) Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Agent, such Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrowers hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender or the Issuing Bank, or by the Agent on its own behalf or on behalf of a Lender or the Issuing Bank setting forth in reasonable detail the manner in which such amount was determined, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrowers to a Governmental Authority, the Borrowers shall deliver to the 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 Agent.

(e) Any [~~Foreign~~] Lender that is entitled to an exemption from or reduction in withholding tax with respect to payments made under any Loan Document shall deliver to the Lead Borrower and the Agent at the time or times reasonably requested by the Lead Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Lead Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. Without limiting the generality of the foregoing (i) any Lender that is not a

Foreign Lender shall deliver to the Lead Borrower and the Agent executed copies of IRS Form W-9, upon the reasonable request of the Lead Borrower or Agent, certifying that such Lender is exempt from U.S. federal backup withholding tax, (ii) any Foreign Lender that is entitled to an exemption from or reduction in withholding tax with respect to payments made under any Loan Document shall deliver to the Lead Borrower and the Agent two copies of either United States Internal Revenue Service Form W-8BEN-E or W-8BEN, as applicable, or Form W-8ECI, or any subsequent versions thereof or successors thereto, or, in the case of a Foreign Lender's claiming exemption from or reduction in U.S. Federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a Form W-8BEN-E or W-8BEN, as applicable, or any subsequent versions thereof or successors thereto (and, if such Foreign Lender delivers a Form W-8BEN-E or W-8BEN, as applicable, a certificate representing that such Foreign Lender is not a bank for purposes of Section 881(c) of the Code, is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of the Borrowers and is not a [e]Controlled [f]Foreign [e]Corporation related to the Borrowers (within the meaning of Section 864(d)(4) of the Code)), or in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax properly completed and duly executed by such Foreign Lender claiming complete exemption from or reduced rate of, United States federal withholding tax on payments by the Borrowers under this Agreement and the other Loan Documents[; ~~or in the case of a Foreign Lender claiming [exemption for "portfolio interest" certifying that it is not a foreign corporation, partnership, estate or trust]~~]. Such forms shall be delivered by each [Foreign]applicable Lender on or before the date it becomes a party to this Agreement[ ~~(or, in the case of a transferee that is a participation holder, on or before the date such participation holder becomes a transferee hereunder)~~] and on or before the date, if any, such[ Foreign] Lender changes its applicable lending office by designating a different lending office (a "New Lending Office"). In addition, each[ Foreign] Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such[ Foreign] Lender. Notwithstanding any other provision of this Section 2.26(e), a[ Foreign] Lender shall not be required to deliver any form pursuant to this 2.26(e) that such [Foreign] Lender is not legally able to deliver.

(f) The Borrowers shall not be required to indemnify any Foreign Lender or to pay any additional amounts to any Foreign Lender in respect of United States federal withholding tax pursuant to paragraph (a) or (c) above to the extent that the obligation to pay such additional amounts would not have arisen but for a failure by such Foreign Lender to comply with the provisions of paragraph (e) above or (g) below. Should a Lender become subject to Taxes because of its failure to deliver a form required hereunder, the Borrowers shall, at such Lender's expense, take such steps as such Lender shall reasonably request to assist such Lender to recover such Taxes.

(g) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Lead Borrower and the Agent, at the time or times prescribed by Applicable Law and at such time or times reasonably requested by the Lead Borrower or the Agent, such documentation prescribed by Applicable Law (including

as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Lead Borrower or the Agent as may be necessary for the Lead Borrower or the Agent to comply with its obligations under FATCA, 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.

(h) Unless required by Applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender or Issuing Bank, or have any obligation to pay to any Lender or Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or Issuing Bank, as the case may be. If any recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Borrower or Facility Guarantor or with respect to which any Borrower or Facility Guarantor has paid additional amounts pursuant to this Section 2.26, it shall pay to such Borrower or Facility Guarantor an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower or Facility Guarantor under this Section 2.26 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such recipient, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Borrower and Facility Guarantor, upon the request of the recipient, agrees to repay the amount paid over to such Borrower or Facility Guarantor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the recipient in the event the recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable recipient be required to pay any amount to such Borrower or Facility Guarantor pursuant to this subsection the payment of which would place the recipient in a less favorable net after-Tax position than such recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Borrower or Facility Guarantor or any other Person.

(i) Each Lender and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, the Agent (x) against any Indemnified Taxes or Other Taxes attributable to such Lender (but only to the extent that any Borrower has not already indemnified the Agent for such Indemnified Taxes or Other Taxes and without limiting the obligation of the Borrowers to do so), (y) against any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.5(f) relating to the maintenance of a Participant Register and (z) against any Excluded Taxes attributable to such Lender that are payable or paid by the 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 Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the 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 to the Agent under this Section 2.26(i).

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

2.27 Security Interests in Collateral. To secure their Obligations under this Agreement and the other Loan Documents, the Borrowers shall grant, and shall cause each Facility Guarantor to grant to the Agent, for its benefit and the ratable benefit of the other Credit Parties, a first-priority security interest[  ~~or mortgage Lien~~] in all of the Collateral pursuant hereto and to the Security Documents.

2.28 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.23, or if the Borrowers are required to pay Indemnified Taxes or any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.26, 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 Sections 2.23 or 2.26, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment; provided, however, that the Borrowers shall not be liable for such costs and expenses of a Lender requesting compensation if (i) such Lender becomes a party to this Agreement on a date after the Effective Date and (ii) the relevant Change in Law resulting in such compensation, Indemnified Taxes or additional amounts occurs on a date prior to the date such Lender becomes a party hereto.

(b) If any Lender requests compensation under Section 2.23, or if the Borrowers are required to pay Indemnified Taxes or any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.26, or if any Lender is a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.5), 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 or to an Eligible Assignee), provided that (i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in unreimbursed drawings under Letters of Credit and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (ii) in the case of any such assignment resulting from a claim for compensation under Section 2.23 or payments required to be made pursuant to Section 2.26, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by

such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

## 2.29 Increase in Commitments.

(a) Provided no Default then exists or would arise therefrom, upon notice to the Agent (which shall promptly notify the Lenders), the Lead Borrower may from time to time request an increase in the Total Commitments (each such increase, a “Commitment Increase”) by an amount (for all such requests) not exceeding \$200,000,000; provided that (i) any such request for an increase shall be in a minimum amount of \$50,000,000, and (ii) the Lead Borrower may make a maximum of four such requests. ~~[At the time of sending such notice, the Lead Borrower (in consultation with the Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).]~~ Any such Commitment Increase may be funded initially by the Agent or one or more existing Lenders as agreed with the Lead Borrower; provided that all existing Lenders will be provided with a right to participate in such Commitment Increase within thirty (30) days following the closing of such Commitment Increase.

(b) Each Lender shall notify the Agent within such time period as specified in clause (a) above whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Commitment Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

(c) The Agent shall notify the Lead Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Agent (which approval shall not be unreasonably withheld), to the extent that the existing Lenders decline to increase their Commitments, or decline to increase their Commitments to the amount requested by the Lead Borrower, the Agent, in consultation with the Lead Borrower, will use its reasonable efforts to arrange for other Eligible Assignees to become a Lender hereunder and to issue commitments in an amount equal to the amount of the increase in the Total Commitments requested by the Lead Borrower and not accepted by the existing Lenders (and the Lead Borrower may also invite additional Eligible Assignees to become Lenders) (such additional Lenders, “Additional Commitment Lenders”), provided, however, that without the consent of the Agent, at no time shall the Commitment of any Additional Commitment Lender be less than \$10,000,000.

(d) If the Total Commitments are increased in accordance with this Section, the Agent, in consultation with the Lead Borrower, shall determine the effective date (the “Increase Effective Date”) and the final allocation of such Commitment Increase. The Agent shall promptly notify the Lead Borrower and the Lenders of the final allocation of such Commitment Increase and the Increase Effective Date and on the Increase Effective Date (i) the Total Commitments under, and for all purposes of, this Agreement shall be increased by the aggregate amount of such Commitment Increase, and (ii) Schedule 1.1 shall be deemed modified, without further action, to reflect the revised Commitments and Commitment Percentages of the Lenders.

(e) As a condition precedent to any such Commitment Increase, (i) the Lead Borrower shall deliver to the Agent a certificate of each Borrower dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a responsible officer of such Borrower (A) certifying and attaching the resolutions adopted by such Borrower approving or consenting to such Commitment Increase, and (B) certifying that, before and after giving effect to such Commitment Increase, (1) the representations and warranties contained in Section ~~[4]~~4 and the other Loan Documents are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section ~~[2.29]~~2.29, the representations and warranties contained in Section ~~[3.4]~~3.4 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a), (b) and (c), respectively, of Section ~~[5.1]~~5.1; (ii) the Borrowers, the Agent, and any Additional Commitment Lender shall have executed and delivered a joinder to the Loan Documents in such form as the Agent shall reasonably require; (iii) the Borrowers shall have paid such fees and other compensation to the Additional Commitment Lenders as the Lead Borrower and such Additional Commitment Lenders shall agree; (iv) the Borrowers shall have paid such arrangement fees to the Agent as the Lead Borrower and the Agent may agree; (v) if requested by the Agent, the Borrowers shall deliver to the Agent and the Lenders an opinion or opinions, in form and substance reasonably satisfactory to the Agent, from counsel to the Borrowers reasonably satisfactory to the Agent and dated such date; (vi) the Borrowers and each Additional Commitment Lender shall have delivered such other instruments, documents and agreements as the Agent may reasonably have requested; and (vii) no Default exists. The Borrowers shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section ~~[2.19(b)]~~2.19(b)) to the extent necessary to keep the outstanding Loans ratable with any revised Commitment Percentages arising from any nonratable increase in the Commitments under this Section ~~[2.29]~~2.29.

(f) This Section shall supersede any provisions in Sections ~~[2.25]~~2.25 or ~~[9.2]~~9.2 to the contrary.

### 2.30 FILO Credit Facility.

(a) Notwithstanding anything to the contrary contained in this Agreement, at any time after the Second Amendment Effective Date, provided no Default or Event of Default then exists or would arise therefrom, upon notice to the Agent (which shall promptly notify the Lenders), the Lead Borrower may request a separate “first-in, last out” credit facility provided by one or more Lenders or other Eligible Assignees as agree to hold “first-in, last out” commitments (the “FILO Lenders”) that are subject to a separate “first-in, last out” incremental borrowing base (collectively, the “FILO Credit Facility”), which FILO Credit Facility, subject to Section 7.3 (as amended in accordance with Section 2.30(b)(i)), shall constitute Obligations for all purposes under the Loan Documents (including for the purposes of being secured by the Collateral and being guaranteed by the Borrowers). The Agent shall promptly notify the Lenders of each such request and the Lenders shall respond thereto in the same manner specified for any Commitment increase requests in Section 2.29(a). The Agent shall notify Lenders and the Lead Borrower of the responses to such request and any actions to arrange for other Eligible Assignees to serve as FILO Lenders in the same manner specified for commitment increases in Section 2.29(c). Any FILO Lender participating in the FILO

Credit Facility which is not then a Lender (or an Affiliate of such Lender engaged in the ordinary course of its business in extending commercial loans) shall be subject to the prior approval of the Agent and the Lead Borrower (such consent not to be unreasonably withheld or delayed).

(b) Notwithstanding anything herein to the contrary, the FILO Credit Facility shall be established in accordance following terms and conditions:

(i) the establishment thereof shall result in an amendment of the payment waterfall in Section 7.3 (without the requirement of the consent of the Lenders under Section 9.2) to include payment of accrued and unpaid interest of Obligations under the FILO Credit Agreement as a new clause "Sixth" and unpaid payment of principal of Obligations under the FILO Credit Agreement as a new clause "Seventh", and renumbering the existing clauses "Sixth", "Seventh", "Eighth", "Ninth" and "Tenth" as clauses "Eighth", "Ninth", "Tenth", "Eleventh" and "Twelfth", respectively;

(ii) subject to other express limitations set forth in this Section 2.30, the FILO Credit Facility shall be on terms and conditions as determined by the Lead Borrower, the Agent and the FILO Lenders, it being understood and agreed that such terms and conditions may include, without limitation, FILO Credit Facility-specific borrowing base, advance rate (including seasonal or fluctuating advance rates), eligibility criteria, availability reserves (including reserves implemented against the Borrowing Base with respect to obligations owing to the FILO Lenders), representations, warranties, covenants and Events of Default, interest rates, fees, final maturity date, amortization, mandatory and voluntary prepayment and commitment termination provision as to the FILO Credit Facility and Section 2.21 or any other provision of the Loan Documents related to cash dominion, and amendment and waiver provisions (including modifications to Section 9.2 to provide for customary or market provisions in favor of the FILO Lenders, which may include voting rights in favor of the FILO Lenders relating to modifications of the Borrowing Base that would affect the FILO Credit Facility or the FILO Lenders) in respect of or relating to the FILO Credit Facility and other customary or market terms and conditions for asset-based "first in, last out" credit facilities of this nature;

(iii) subject to amortization or mandatory FILO Credit Facility reduction terms and conditions, the stated maturity date of the FILO Credit Facility shall not be earlier than the then Maturity Date;

(iv) the advance rates in respect of the incremental borrowing base under FILO Credit Facility shall not exceed five percent (5.0%) on any class of assets eligible for inclusion therein;

(v) the arrangement of the FILO Credit Facility, and any upfront, underwriting, arrangement or similar fees in respect of the FILO Credit Facility, shall be agreed to by the Lead Borrower, Bank of America and the FILO Lenders;

(vi) the FILO Credit Facility shall be subject to closing conditions as may be determined by the Agent, the FILO Lenders and the Lead Borrower;

(vii) the FILO Credit Facility shall be subject to the condition precedent that no Event of Default shall have occurred and be continuing immediately before or after giving effect thereto;

(viii) the aggregate amount of the FILO commitments under the FILO Credit Facility shall not exceed \$50,000,000;

(ix) all documentation in respect of the FILO Credit Facility shall be consistent with the foregoing and in form and substance reasonably satisfactory to the Agent and the FILO Credit Facility Lenders, and the FILO Credit Facility Amendment shall have been approved by the Agent;

(x) the Lead Borrower shall not be required to offer any Lender an opportunity to join the FILO Credit Facility as a FILO Lender; and

(xi) no Lender shall be obligated to participate in the FILO Credit Facility.

(c) Notwithstanding anything in Section 9.2 or any other provision of the Loan Documents to the contrary, the Lenders hereby irrevocably authorize the Agent to enter into amendments, restatements or other supplements or modifications to this Agreement and the other Loan Documents with the Borrowers and the FILO Lenders as may be necessary or desirable in order to establish the FILO Credit Facility, in each case on terms consistent with this Section 2.30 ("FILO Credit Facility Amendment") without the consent or approval of any Lenders (other than the Lenders participating in the FILO Credit Facility). The Lenders hereby consent to the FILO Credit Facility and other transactions contemplated by this Section 2.30 (including, for the avoidance of doubt, the terms and condition illustrated in clause (b) above) and hereby waive the requirements of any provision of this Agreement (including, without limitation, any pro rata payment section or amendment or waiver section) or any other Loan Document that may otherwise prohibit or restrict the FILO Credit Facility, the FILO Credit Facility Amendment or any other transaction contemplated by this Section 2.30. The Agent shall have the right (but not the obligation) to consult with the Required Lenders with respect to the FILO Credit Facility and any matter contemplated by this Section 2.30; provided, however, that whether or not there has been any consultation with the Required Lenders by the Agent with respect to a FILO Credit Facility, any such FILO Credit Facility Amendment entered into by the Agent pursuant to this Section 2.30 shall be binding and conclusive on the Lenders in all respects.

### 3. REPRESENTATIONS AND WARRANTIES.

Each Borrower, for itself and on behalf of each other member of the Borrower Affiliated Group, represents and warrants to the Agent and the Lenders that:

3.1 Organization; Powers. Each member of the Borrower Affiliated Group is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and each such Person has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

3.2 Authorization; Enforceability. The transactions contemplated hereby and by the other Loan Documents to be entered into by each Borrower and Facility Guarantor are within such Borrower's and Facility Guarantor's corporate powers and have been duly authorized by all necessary corporate, and, if required, stockholder action. This Agreement has been duly executed and delivered by each Borrower and constitutes, and each other Loan Document to which any Borrower or Facility Guarantor is a party, when executed and delivered by such Borrower or Facility Guarantor will constitute, a legal, valid and binding obligation of such Borrower or Facility Guarantor (as the case may be), enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

3.3 Governmental Approvals; No Conflicts. The transactions to be entered into contemplated by the Loan Documents (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) for such as have been obtained or made and are in full force and effect, (ii) for those which could not be reasonably be expected to have a Material Adverse Effect, and (iii) for filings and recordings necessary to perfect Liens created under the Loan Documents, (b) will not violate any Applicable Law or regulation or the charter, by[-] laws or other organizational documents of any Borrower or any other member of the Borrower Affiliated Group or any order of any Governmental Authority, except for such violation which could not reasonably be expected to have a Material Adverse Effect, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Borrower or any other member of the Borrower Affiliated Group or their respective assets, except for such violation or default which could not reasonably be expected to have a Material Adverse Effect, or give rise to a right thereunder to require any material payment to be made by any Borrower or any other member of the Borrower Affiliated Group, and (d) will not result in the creation or imposition of any Lien on any material asset of any Borrower or any other member of the Borrower Affiliated Group, except Liens created under the Loan Documents or otherwise permitted hereby or thereby.

3.4 Financial Condition. The Lead Borrower has heretofore furnished to the Lenders the audited consolidated balance sheet, and statements of income, stockholders' equity, and cash flows for Borrower Affiliated Group as of and for the fiscal year ending [~~February~~January 28, 201[3]7 and the unaudited consolidated balance sheet and statements of income, stockholders' equity, and cash flows for Borrower Affiliated Group for the fiscal quarters ending [~~May 4~~April 29, 201[3, August 3, 2013]7 and [~~November~~July 29, 201[3]7. Such financial statements present

fairly, in all material respects, the financial position, results of operations and cash flows of the Borrower Affiliated Group, in each case, as of such dates and for such periods in accordance with GAAP.

### 3.5 Properties.

(a) Each member of the Borrower Affiliated Group has good title to, or valid leasehold interests in, all of such Person's real and personal property material to its business, except for defects which could not reasonably be expected to have a Material Adverse Effect.

(b) ~~Schedule [3.5(b)]3.5(b)(i)~~ sets forth the address [~~(including county)~~] of all Real Estate that is owned by ~~[each member of the Borrower Affiliated Group]~~ a Domestic Subsidiary as of the Second Amendment Effective Date, together with a list of the holders of any mortgage or other Lien thereon. ~~Schedule [3.5(b)]3.5(b)(ii)~~ sets forth the address of all Real Estate that is leased by ~~[each member of the Borrower Affiliated Group]~~ a Domestic Subsidiary as of the Second Amendment Effective Date. Each of such leases is in full force and effect and no Borrower or Facility Guarantor is in default of the terms thereof, except for such defaults which would not reasonably be expected to have a Material Adverse Effect.

### 3.6 Litigation and Environmental Matters.

(a) There are no actions, suits, investigations, or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any member of the Borrower Affiliated Group, threatened against or affecting any such Person (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than those set forth on Schedule [3.6]3.6) or (ii) that involve any of the Loan Documents.

(b) Except for the matters set forth on Schedule [3.6]3.6, and except as could not reasonably be expected to have a Material Adverse Effect, no member of the Borrower Affiliated Group (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(c) Since the Second Amendment Effective Date, there has been no change in the status of the matters set forth on Schedule [3.6]3.6 that, individually or in the aggregate, has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

3.7 Compliance with Laws and Agreements. Each member of the Borrower Affiliated Group is in compliance with all laws, regulations and orders of any Governmental Authority applicable to such Person or its property and all indentures, material agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

3.8 Investment and Holding Company Status. No member of the Borrower Affiliated Group is (a) an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a “holding company” as defined in, or subject to regulation under, the Public Utility Holding Company Act of 2005.

3.9 Taxes. Each member of the Borrower Affiliated Group has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all taxes required to have been paid by it, except (a) taxes that are being contested in good faith by appropriate proceedings, for which such Person has set aside on its books adequate reserves, and as to which no Lien has arisen, or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

3.10 ERISA. Except as set forth in Schedule [3.10]3.10, no member of the Borrower Affiliated Group is party to a Plan. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) does 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, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) does not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans.

3.11 Interdependence of Borrower Affiliated Group.~~[(a)—]~~ The business of each member of the Borrower Affiliated Group shall benefit from the successful performance of the business of each other member of the Borrower Affiliated Group, and the Borrower Affiliated Group as a whole.

(a) ~~[(b)]~~ Each member of the Borrower Affiliated Group has cooperated to the extent necessary and shall continue to cooperate with each other member of the Borrower Affiliated Group to the extent necessary in the development and conduct of each other member of the Borrower Affiliated Group's business, and shall to the extent necessary share and participate in the formulation of methods of operation, distribution, leasing, inventory control, and other similar business matters essential to each member of the Borrower Affiliated Group's business.

(b) ~~[(c)]~~ The failure of any member of the Borrower Affiliated Group to cooperate with all other members of the Borrower Affiliated Group in the conduct of their respective businesses shall have an adverse impact on the business of each other member of the Borrower Affiliated Group, and the failure of any member of the Borrower Affiliated Group to associate or cooperate with all other members of the Borrower Affiliated Group is reasonably likely to impair the goodwill of such other members of Borrower Affiliated Group and the Borrower Affiliated Group as a whole.

(c) ~~[(d)]~~ Each Borrower and Facility Guarantor is accepting joint and several liability for the Obligations on the terms and conditions set forth in Section ~~[9.14]9.14~~ hereof and represents and warrants that the financial accommodations being provided hereby are for the mutual benefit, directly and indirectly, of each Borrower and Facility Guarantor.

3.12 Disclosure. The Borrowers have disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which any member of the Borrower Affiliated Group is subject, and all other matters known to any such Person, that, individually or in the aggregate, in each case, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any member of the Borrower Affiliated Group to the Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or thereunder (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.

3.13 Subsidiaries. On and as of the Second Amendment Effective Date, the authorized [~~capital stock or other equity~~]Equity Interests, and the number of issued and outstanding shares of [~~capital stock or other equity, of the Borrowers and each other member of the Borrower Affiliated Group~~]Equity Interests, of the Domestic Subsidiaries (other than any Excluded Subsidiary) is as described in Schedule [3.13]3.13. All such outstanding shares of [~~capital stock or other equity of the Borrowers and each other member of the Borrower Affiliated Group have~~]Equity Interests of such Domestic Subsidiaries has been duly and validly issued, in compliance with all legal requirements relating to the authorization and issuance of shares of [~~capital stock or other equity~~]Equity Interests, and are fully paid and non-assessable. [~~There is no other capital stock or ownership interest~~]Other than with respect to any Excluded Subsidiary, Foreign Subsidiary or Latamel, there is no other Equity Interests of any class outstanding. [~~Except~~]On and as of the Second Amendment Effective Date, except as set forth on Schedule [3.13]3.13, no member of the Borrower Affiliated Group is party to any joint venture, general or limited partnership, or limited liability company, agreements or any other business ventures or entities.

3.14 Insurance. Schedule [3.14]3.14 sets forth a description of all insurance maintained by or on behalf of the Borrower Affiliated Group as of the Second Amendment Effective Date. Each of such policies is in full force and effect. As of the Second Amendment Effective Date, all premiums in respect of such insurance that are due and payable have been paid.

3.15 Labor Matters. There are no strikes, lockouts or slowdowns against any member of the Borrower Affiliated Group pending or, to the knowledge of the Borrowers, threatened. The hours worked by and payments made to employees of the members of the Borrower Affiliated Group have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, local or foreign law dealing with such matters to the extent that any such violation could reasonably be expected to have a Material Adverse Effect. All payments due from any member of the Borrower Affiliated Group, or for which any claim may be made against any such Person, 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 such member. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any member of the Borrower Affiliated Group is bound.

3.16 Certain Transactions. Except as set forth on Schedule ~~[3-16]~~3.16, none of the officers, partners, or directors of any member of the Borrower Affiliated Group is presently a party to any transaction, and, to the knowledge of the executive officers of the Borrowers, none of the employees of any member of the Borrower Affiliated Group is presently a party to any material transaction, with any other member of the Borrower Affiliated Group or any Affiliate (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, partner, director or such employee or, to the knowledge of the executive officers of the Borrowers, any corporation, partnership, trust or other entity in which any officer, partner, director, or any such employee or natural person related to such officer, partner, director or employee or other Person in which such officer, partner, director or employee has a direct or indirect beneficial interest, has a substantial direct or indirect beneficial interest or is an officer, director, trustee or partner.

3.17 Restrictions on the Borrower Affiliated Group. No member of the Borrower Affiliated Group is a party to or bound by any contract, agreement or instrument, or subject to any charter or other corporate restriction, that has or could reasonably be expected to have a Material Adverse Effect.

3.18 Security Documents. The Security Documents create in favor of the Agent, for the ratable benefit of the Credit Parties, a legal, valid and enforceable security interest[ ~~or mortgage Lien, as applicable,~~] in the Collateral, and the Security Documents constitute, or will upon the filing of financing statements and the obtaining of "control", in each case with respect to the relevant Collateral as required under the applicable Uniform Commercial Code, the creation of a fully perfected first priority Lien on, and security interest in, all right, title and interest of the Borrowers and each Facility Guarantor thereunder in such Collateral, in each case prior and superior in right to any other Person (other than Permitted Encumbrances having priority under Applicable Law), except as permitted hereunder or under any other Loan Document.

3.19 Federal Reserve Regulations.

(a) No member of the Borrower Affiliated Group is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to buy or carry Margin Stock or to extend credit to others for the purpose of buying 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 X.

3.20 Solvency. The Borrower Affiliated Group, taken as a whole, is Solvent. No transfer of property is being made by any Borrower and no obligation is being incurred by any Borrower in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Borrower.

3.21 Intellectual Property, Licenses and Permits. Except as otherwise set forth on Schedule [3.21]3.21 hereto, each ~~[member of the Borrower Affiliated Group]~~Domestic Subsidiary owns, or is licensed to use, all Intellectual Property, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of its business as substantially now conducted without known conflict with any rights of any other Person and, in each case, free of any Lien that is not a Permitted Encumbrance.

3.22 EEA Financial Institution. None of the Borrowers is an EEA Financial Institution.

3.23 Sanctions Concerns and Anti-Corruption Laws.

(a) No Borrower, nor any Subsidiary, nor, to the knowledge of the Borrowers, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) The Borrowers and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws and applicable Sanctions, and to the knowledge of each Borrower, the Borrowers and their Subsidiaries are in compliance with such anti-corruption laws and applicable Sanctions in all material respects.

#### 4. CONDITIONS.

4.1 Effective Date. The effectiveness of this Agreement ~~[is]~~on the Effective Date was subject to the following conditions precedent:

(a) The Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement and all other Loan Documents (including, without limitation, the Security Documents) signed on behalf of such party or (ii) written evidence satisfactory to the Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and all other Loan Documents.

(b) The Agent shall have received a favorable written opinion (addressed to the Agent and the Lenders on the Effective Date and dated the Effective Date) of Bryan Cave LLP, counsel for the Borrowers, substantially in the form of [Exhibit C](#), covering such matters relating to the Borrowers, the Loan Documents or the transactions contemplated thereby as the Required Lenders shall reasonably request. The Borrowers hereby request such counsel to deliver such opinion.

(c) The Agent shall have received such documents and certificates as the Agent or its counsel may reasonably request relating to the organization, existence and good standing of each member of the Borrower Affiliated Group, the authorization of the transactions contemplated by the Loan Documents and any other legal matters relating to the Borrower Affiliated Group, the Loan Documents or the transactions contemplated thereby, all in form and substance reasonably satisfactory to the Agent and its counsel.

(d) The Agent shall have received a Borrowing Base Certificate dated the Effective Date, relating to the month ended on March 1, 2014, and executed by a Financial Officer of the Lead Borrower.

(e) The Agent shall have received a certificate from the chief financial officer of the Lead Borrower, together with such other evidence reasonably requested by the Agent, in each case reasonably satisfactory in form and substance to the Agent, (i) with respect to the solvency of the Borrower Affiliated Group on a consolidated basis, as of the Effective Date, and (ii) certifying that, as of the Effective Date, the representations and warranties made by the Borrowers in the Loan Documents are true and complete in all material respects and that no event has occurred (or failed to occur) which is or which, solely with the giving of notice or passage of time (or both) would be a Default or an Event of Default.

(f) All necessary consents and approvals to the transactions contemplated hereby shall have been obtained and shall be reasonably satisfactory to the Agent, including, without limitation, consents from all requisite material Governmental Authorities and except as would not reasonably be expected to have or result in a Material Adverse Effect.

(g) No event shall have occurred that could reasonably be expected to have a Material Adverse Effect.

(h) The Agent shall have received and be satisfied with updated projections in form and substance reasonably satisfactory to the Agent.

(i) Except as set forth on [Schedule 3.6 as of the Effective Date](#), there shall not be pending any litigation or other proceeding, the result of which could reasonably be expected to have a Material Adverse Effect on the Borrower Affiliated Group, taken as a whole.

(j) After giving effect to the consummation of the transactions contemplated on the Effective Date, no Default or Event of Default shall then exist.

(k) The Agent shall have received results of searches from such jurisdictions as may be reasonably required by the Agent or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the Collateral, including, without limitation, receivables from credit card processors, except for Permitted Encumbrances.

(l) The Agent shall have received all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Agent to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents and all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Agent.

(m) The Agent shall have received the Blocked Account Agreements required to be delivered hereunder on or before the Effective Date.

(n) All fees due at or immediately after the Effective Date and all reasonable costs and expenses incurred by the Agent in connection with this Agreement and the other Loan Documents (including the reasonable fees and expenses of counsel to the Agent) shall have been paid in full.

(o) The consummation of the transactions contemplated hereby shall not (a) violate any Applicable Law, or (b) conflict with, or result in a default or event of default under, any material agreement of Borrowers or any other member of the Borrower Affiliated Group, taken as a whole (and the Agent and the Lenders shall receive a satisfactory opinion of Borrowers' counsel to that effect). No event shall exist which is, or solely with the passage of time, the giving of notice or both, would be a default under any material agreement of any member of the Borrower Affiliated Group.

(p) No material changes in governmental regulations or policies affecting the Borrowers, the Agent, or any Lender involved in this transaction shall have occurred prior to the Effective Date which could, individually or in the aggregate, materially adversely affect the transaction contemplated by this Agreement.

(q) After giving effect to the consummation of the transactions contemplated on the Effective Date, Excess Availability shall be not less than \$200,000,000.

(r) The Agent shall have received, and be satisfied with, evidence of the Borrowers' insurance, together with such endorsements as are required by the Loan Documents.

(s) Any other information (financial or otherwise) reasonably requested by the Agent shall have been received by, and shall be in form and substance reasonably acceptable to, the Agent, and the Agent shall have completed all due diligence to the satisfaction of the Agent.

(t) There shall have been delivered to the Agent such additional instruments and documents as the Agent or counsel to the Agent reasonably may require or request.

The Agent shall notify the Lead Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

4.2 Conditions Precedent to Each Loan and Each Letter of Credit. ~~[In addition to those conditions described in Section ]~~ ~~[4.1]~~ After the Effective Date, the obligation of the Lenders to make each Loan and of the Issuing Bank to issue, renew or extend each Letter of Credit, is subject to the following conditions precedent:

(a) Notice. The Agent shall have received a notice with respect to such Borrowing or issuance, as the case may be, as required by Section 2.3.

(b) Representations and Warranties. All representations and warranties contained in this Agreement and the other Loan Documents or otherwise made in writing in connection herewith or therewith shall be true and correct in all material respects on and as of the date of each Borrowing or the issuance of each Letter of Credit hereunder with the same effect as if made on and as of such date, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects and (iii) for purposes of this Section ~~[4.2]~~ 4.2, the representations and warranties contained in Section ~~[3.4]~~ 3.4 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a), (b) or (c), as applicable, of Section ~~[5.1]~~ 5.1.

(c) No Default. On the date of each Borrowing hereunder and the issuance of each Letter of Credit, the Borrowers shall be in compliance with all of the terms and provisions set forth herein and in the other Loan Documents to be observed or performed and no Default or Event of Default shall have occurred and be continuing.

(d) Borrowing Base Certificate. The Agent shall have received the most recently required Borrowing Base Certificate, with each such Borrowing Base Certificate including schedules as required by the Agent, and reflecting that, after giving effect to such Credit Extension requested to be made on any such date and the use of proceeds thereof, no Overadvance exists or would result from such Credit Extension.

The request by the Borrowers for, and the acceptance by the Borrowers of, each extension of credit hereunder shall be deemed to be a representation and warranty by the Borrowers that the conditions specified in this Section 4.2 have been satisfied at that time and that after giving effect to such extension of credit the Borrowers shall continue to be in compliance with the Borrowing Base. The conditions set forth in this Section 4.2 are for the sole benefit of the Agent and each Lender and may be waived by the Agent in whole or in part without prejudice to the Agent or any Lender.

## 5. AFFIRMATIVE COVENANTS. [-]

Until the Commitments have expired or been terminated, all Loans and other Obligations hereunder have been paid or satisfied in full in cash (other than contingent indemnification claims for which a claim has not been asserted), and all Letters of Credit shall have expired or terminated

and all L/C Disbursements have been reimbursed, each Borrower covenants and agrees with the Agent and the Lenders that:

~~[5.1—]~~~~[Financial Statements and Other Information]~~

5.1 ~~[ ]~~ Financial Statements and Other Information. The Borrowers will furnish to the Agent:

(a) within ninety (90) days after the end of each fiscal year of the Borrower Affiliated Group, a consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all audited and reported on by BDO USA, LLP or another independent public accountant of recognized national standing (without a “going concern” or like qualification or exception and without a qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower Affiliated Group on a consolidated basis in accordance with GAAP consistently applied;

(b) within forty-five (45) days after the end of each fiscal quarter of the Borrower Affiliated Group, a consolidated balance sheet and related statements of operations, stockholders' equity and cash flows, as of the end of and for such fiscal quarter and the elapsed portion of the fiscal year, with comparative results to the same fiscal periods of the prior fiscal year, all certified by a Financial Officer of the Lead Borrower as presenting in all material respects the financial condition and results of operations of the Borrower Affiliated Group on a consolidated basis in accordance with GAAP consistently applied, subject to normal year end audit adjustments and the absence of footnotes;

(c) if at any time (i) Excess Availability is less than ~~[forty (40%)]~~ thirty percent ~~(40%)~~ (30%) of the Loan Cap or (ii) an Event of Default has occurred and is continuing, within thirty (30) days after the end of each of the fiscal months of each fiscal year of the Borrower Affiliated Group, a consolidated balance sheet and related statements of operations, stockholders' equity and cash flows, as of the end of and for such fiscal month and the elapsed portion of the fiscal year, with comparative results to the same fiscal periods of the prior fiscal year, all certified by a Financial Officer of the Lead Borrower as presenting in all material respects the financial condition and results of operations of the Borrower Affiliated Group on a consolidated basis in accordance with GAAP consistently applied, subject to normal year end audit adjustments and the absence of footnotes;

(d) concurrently with any delivery of financial statements under clause (a), (b) or (c) above, a certificate of a Financial Officer of the Lead Borrower in the form of Exhibit E hereto (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations with respect to the Fixed Charge Coverage Ratio for such period (whether or not such ratio is required to be tested pursuant to Section ~~[6.11]~~ 6.11 hereof), and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the Borrowers' audited financial statements referred to in Section 3.4 and, if any such change has

occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(e) within thirty (30) days after the commencement of each fiscal year of the Borrower Affiliated Group, a detailed consolidated budget by quarter (provided that, such budget shall be by month at all times after a Cash Dominion Event has occurred and is continuing or at any time when an Accelerated Borrowing Base Delivery Event is continuing) for such fiscal year (including a projected consolidated balance sheet, related statements of projected operations and cash flow), and an Excess Availability model by month, as of the end of and for such fiscal year);

(f) within ten (10) days after the end of each fiscal month, a certificate in the form of Exhibit D (with such changes therein as may be required by the Agent to reflect the components of and reserves against the Borrowing Base as provided for hereunder from time to time) (a “Borrowing Base Certificate”) showing the Borrowing Base as of the close of business on the last day of the immediately preceding month, each such Certificate to be certified as complete and correct on behalf of the Borrower Affiliated Group by a Financial Officer of the Lead Borrower, provided, however, if and so long as an Accelerated Borrowing Base Delivery Event is continuing, such Borrowing Base Certificate (showing the Borrowing Base as of the close of business on the last day of the immediately preceding week) shall be delivered weekly on Wednesday of each week;

(g) within thirty (30) days after the commencement of each fiscal year, projected sales and inventory levels and cash flow for the Borrowers' stores for each month of the following fiscal year;

(h) the financial and collateral reports described on Schedule [5.1(h)]5.1(h) hereto, at the times set forth in such Schedule;

(i) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Lead Borrower or any other member of the Borrower Affiliated Group with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, as the case may be; provided that the Borrowers shall not be required to deliver copies of any of the foregoing items to the extent that the Borrowers have notified the Agent that such items are available to the Agents on EDGAR or the Lead Borrower's website, and such items are so available;

(j) Fifteen (15) days' after the consummation of a Permitted Acquisition, (A) copies of purchase and sale agreements or other acquisition documents to be executed in connection with the Permitted Acquisition, and (B) with respect to any Permitted Acquisition for aggregate consideration of equal to or greater than \$35,000,000, (i) copies of the most recent audited, and if later, unaudited financial statements of the Person which is the subject of the Permitted Acquisition, and (ii) an unaudited pro forma Consolidated balance sheet and income statement of the Borrower Affiliated Group as of the end of the most recently completed fiscal quarter but prepared as though the Permitted Acquisition had occurred on such date and related pro forma calculations of average Excess Availability for the subsequent four fiscal quarters period;

(k) notice of any (i) sale or other disposition of assets of any Borrower permitted under Section ~~6.5(e)~~6.5(e) hereof promptly following the date of consummation such sale or disposition or (ii) incurrence of any Indebtedness permitted under Section 6.1(d) promptly following the incurrence of such Indebtedness;

(l) promptly upon receipt thereof, copies of all reports submitted to the Lead Borrower or any other member of the Borrower Affiliated Group by independent certified public accountants in connection with each annual, interim or special audit of the books of the Borrower Affiliated Group made by such accountants, including any management letter commenting on the Borrowers' internal controls submitted by such accountants to management in connection with their annual audit; and

(m) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Lead Borrower or any other member of the Borrower Affiliated Group, or compliance with the terms of any Loan Document, as the Agent or any Lender may reasonably request.

5.2 Notices of Material Events. The Borrowers will, and will cause each other member of the Borrower Affiliated Group to furnish to the Agent and the Issuing Bank prompt written notice of the following:

(a) the occurrence of any Default or Event of Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting any member of the Borrower Affiliated Group that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(d) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect;

(e) any change in any Borrower's chief executive officer or chief financial officer;

(f) any collective bargaining agreement or other labor contract to which any member of the Borrower Affiliated Group becomes a party, or the application for the certification of a collective bargaining agent;

(g) the filing of any Lien for unpaid taxes in an aggregate amount in excess of \$2,500,000 against any member of the Borrower Affiliated Group; and

(h) the discharge by any Borrower of its present independent accountants or any withdrawal or resignation by such independent accountants.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Lead Borrower setting forth the details of the event or development requiring such notice and, if applicable, any action taken or proposed to be taken with respect thereto.

5.3 Information Regarding Collateral. The Lead Borrower will furnish to the Agent thirty (30) days' prior written notice of any change (i) in any member of the Borrower Affiliated Group's corporate or legal name used to identify it in the conduct of its business or in the ownership of its properties, (ii) in the location of any member of the Borrower Affiliated Group's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility), (iii) in any member of the Borrower Affiliated Group's organizational structure or (iv) in any member of the Borrower Affiliated Group's jurisdiction of incorporation or formation, Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization.

5.4 Existence; Conduct of Business. Each Borrower will, and will cause each other member of the Borrower Affiliated Group to, do or cause to be done all things necessary to comply with its respective charter, certificate of incorporation, articles of organization, and/or other organizational documents, as applicable; and by-laws and/or other instruments which deal with corporate governance, and to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business, provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.3 or any sale, lease, transfer or other disposition permitted by Section 6.5.

5.5 Payment of Obligations. Each Borrower will, and will cause each other member of the Borrower Affiliated Group to, pay its Indebtedness and other obligations, including tax liabilities, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Borrower or such other member of the Borrower Affiliated Group has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation, (d) no Lien secures such obligation and (e) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. Nothing contained herein shall be deemed to limit the rights of the Agent under Section 2.2(b).

5.6 Maintenance of Properties. Each Borrower will, and will cause each other member of the Borrower Affiliated Group to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted and with the exception of asset dispositions permitted hereunder.

5.7 Insurance.

(a) Each Borrower will, and will cause each other member of the Borrower Affiliated Group to, (i) maintain insurance with financially sound and reputable insurers [that, with respect to the Domestic Subsidiaries, are](#) reasonably acceptable to the Agent (or, to the extent

consistent with prudent business practice, a program of self-insurance consistent with current practices) on such of its property and in at least such amounts and against at least such risks as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death occurring upon, in or about or in connection with the use of any properties owned, occupied or controlled by it (including the insurance required pursuant to the Security Documents); (ii) maintain such other insurance as may be required by law; and (iii) furnish to the Agent, upon written request, full information as to the insurance carried with respect to the Domestic Subsidiaries. The Agent shall not, by the fact of approving, disapproving, accepting, obtaining or failing to obtain any such insurance, incur liability for the form or legal sufficiency of insurance contracts, solvency of insurance companies or payment of lawsuits, and each Borrower and each other member of the Borrower Affiliated Group hereby expressly assumes full responsibility therefor and liability, if any, thereunder. The Borrowers shall, and shall cause each [~~other member of the Borrower Affiliated Group~~]Domestic Subsidiary to, furnish to the Agent certificates or other evidence satisfactory to the Agent of compliance with the foregoing insurance provisions.

(b) Fire and extended coverage policies maintained with respect to any Collateral shall be endorsed or otherwise amended to include (i) a lenders' loss payable clause, in form and substance reasonably satisfactory to the Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Borrowers under the policies directly to the Agent, (ii) a provision to the effect that none of the Borrowers, the Agent, or any other party shall be a coinsurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Lenders. Commercial general liability policies shall be endorsed to name the Agent as an additional insured. Business interruption policies shall name the Agent as a lenders' loss payee and shall be endorsed or amended to include (i) a provision that, from and after the Effective Date, the insurer shall pay all proceeds in excess of \$5,000,000 otherwise payable to the Borrowers under the policies directly to the Agent, provided, however, that the Agent, at its option, may waive such requirement to delivery any such proceeds prior to the occurrence of a Cash Dominion Event, and the Agent hereby agrees that prior to the occurrence of a Cash Dominion Event, the Agent shall remit any such proceeds received by Agent under the policies to Borrowers, provided further that after the occurrence of a Cash Dominion Event, the Agent shall apply any proceeds received in accordance with Section 2.22 or ~~[7.3]~~7.3 hereof, as applicable, (ii) a provision to the effect that none of the Borrowers, the Agent or any other party shall be a co[-] insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Lenders. Each such policy referred to in this paragraph also shall provide that it shall not be canceled, modified or not renewed except upon not less than 30 days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums). The Borrowers shall deliver to the Agent, prior to the cancellation, modification or nonrenewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent) together with evidence satisfactory to the Agent of payment of the premium therefor.

~~[(c) If at any time any Real Estate subject to the Mortgages is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), the Borrowers will~~

~~obtain flood insurance in such total amount as is reasonable and customary for companies engaged in the Borrowers' business, and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended from time to time.]~~

5.8 Casualty and Condemnation. Each Borrower will furnish to the Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or any part thereof or interest therein under power of eminent domain or by condemnation or similar proceeding.

5.9 Books and Records; Inspection and Audit Rights.

(a) Each Borrower will, and will cause each other member of the Borrower Affiliated Group to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Each Borrower will permit any representatives designated by the Agent, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

(b) Each Borrower will, and will cause each other member of the Borrower Affiliated Group to, from time to time upon the reasonable request and reasonable prior notice of the Agent or the Required Lenders through the Agent, permit the Agent or professionals (including consultants, accountants, lawyers and appraisers) retained by the Agent to conduct appraisals, commercial finance examinations and other evaluations, including, without limitation, of (i) the Borrowers' practices in the computation of the Borrowing Base and (ii) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, and pay the reasonable fees and expenses of the Agent or such professionals with respect to such evaluations and appraisals, provided that prior to the occurrence and continuation of an Event of Default, the Borrowers shall only be required to pay the fees and expenses for (i) one commercial finance examination and one appraisal during each twelve month period following the Second Amendment Effective Date so long as the conditions set forth in clause[s] (ii) ~~or (iii)~~ below do not apply, and (ii) two commercial finance examinations and two appraisals during each twelve month period following the Second Amendment Effective Date if Excess Availability is at any time less than twenty ~~five percent (25%) of the Loan Cap, and (iii) three commercial finance examinations and three appraisals during each twelve month period following the Effective Date if Excess Availability is at any time less than fifteen percent (15)~~ percent (20%) of the Loan Cap. Notwithstanding the foregoing limitations on the Borrowers' obligation to pay the expenses for appraisals and commercial finance examinations prior to the occurrence of an Event of Default, the Agent may, (i) undertake such additional appraisals and commercial finance examinations prior to the occurrence of an Event of Default as it, in its Permitted Discretion, deems necessary, at the expense of the Lenders, and (ii) if an Event of Default shall have occurred and be continuing, undertake such additional appraisals and commercial finance examinations at the Borrowers' expense as it deems appropriate.

(c) The Borrowers shall, at all times, retain BDO USA, LLP or other independent certified public accountants who are reasonably satisfactory to the Agent and instruct such accountants to cooperate with, and be available to, the Agent or its representatives to discuss the Borrowers' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such accountants, as may be raised by the Agent.

5.10 Fiscal Year. Each of the Borrowers and each other member of the Borrower Affiliated Group shall have a fiscal year ending on the Saturday closest to January 31 of each year and shall notify the Agent of any change in such fiscal year.

5.11 Physical Inventories.

(a) The Agent, at the expense of the Borrowers, may participate in and/or observe each physical count and/or inventory of so much of the Collateral as consists of Inventory which is undertaken on behalf of the Borrowers so long as such participation does not disrupt the normal inventory schedule or process, provided that such participation shall be limited to once in any twelve month period after the Second Amendment Effective Date (unless a Cash Dominion Event shall have occurred and be continuing).

(b) The Borrowers, at their own expense, shall cause not less than one physical inventory of the Borrowers' inventory to be undertaken in each twelve (12) month period during which this Agreement is in effect, conducted by the Borrowers and using practices consistent with practices in effect on the date hereof.

(c) At the Agent's request, the Borrowers, within forty-five (45) days following the completion of such inventory, shall provide the Agent with a reconciliation of the results of each such inventory (as well as of any other physical inventory undertaken by the Borrowers) and shall post such results to the Borrowers' stock ledger and general ledger, as applicable.

(d) If and so long as there are any Loans outstanding, the Agent, in its discretion, if any Event of Default exists, may cause such additional inventories to be taken as the Agent determines (each, at the expense of the Borrowers). The Agent shall use its best efforts to schedule any such inventories so as to not unreasonably disrupt the operation of the Borrowers' business.

5.12 Compliance with Laws. Each Borrower will, and will cause each other member of the Borrower Affiliated Group to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.13 Use of Proceeds and Letters of Credit. The proceeds of Loans made hereunder and Letters of Credit issued hereunder will be used only (a) for Restricted Payments permitted hereunder, Permitted Acquisitions and Permitted Foreign Acquisitions, (b) to finance the acquisition of working capital assets of the Borrowers, including the purchase of inventory and equipment, in each case in the ordinary course of business, (c) to finance Capital Expenditures of the Borrowers, and (d) for general corporate purposes, all to the extent permitted herein. No part of the proceeds of any Loan will be used, whether directly or indirectly, in violation of Sections [~~9.15~~6.14, 6.15, 9.15 or

~~[9.16]~~9.16 hereof, or for any purpose that entails a violation of any of the Regulations of the Board, including Regulations U and X or to make payments of principal or fees on the Senior Notes, except as provided in Section ~~[6.1(b)]~~6.1(b) hereof.

5.14 Additional Subsidiaries ~~[(a)—]~~. If any additional Domestic Subsidiary (other than an Excluded Subsidiary) of any Borrower is formed or acquired after the Effective Date, the Lead Borrower will promptly notify the Agent and the Lenders thereof and (i) if a wholly owned Domestic Subsidiary, the Borrowers will cause each such Domestic Subsidiary, to become a Borrower or Facility Guarantor hereunder and to deliver all “know your customer” information as reasonably requested by the Agent to comply with the Act, as the Agent or the Lead Borrower may request, and under each applicable Security Document in the manner provided therein within thirty (30) days after such Domestic Subsidiary is formed or acquired and promptly take such actions to create and perfect Liens on such Domestic Subsidiary's assets to secure the Obligations as the Agent shall reasonably request and (ii) any shares of ~~[capital stock]~~ Equity Interests owned, and if any Indebtedness of such Domestic Subsidiary (whether or not wholly owned) are owned, by or on behalf of any Borrower, the Borrowers will cause such shares and promissory notes evidencing such Indebtedness to be pledged within thirty (30) Days after such Domestic Subsidiary is formed or acquired.

(a) ~~[(b)]~~ If any additional Material Foreign Subsidiary of any Borrower is formed or acquired after the Effective Date or if a Foreign Subsidiary becomes a Material Foreign Subsidiary, the Lead Borrower will notify the Agent and the Lenders thereof and the Borrowers shall cause 65% of the outstanding shares of Voting Stock of such Material Foreign Subsidiary (or such lesser percentage as is owned by any such Borrower) to be pledged within sixty (60) days after such Material Foreign Subsidiary is formed or acquired or such Subsidiary becomes a Material Foreign Subsidiary.

5.15 Further Assurances. Each member of the Borrower Affiliated Group will execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any Applicable Law, or which the Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Borrowers. The Borrowers also agree to provide to the Agent, from time to time upon request, evidence reasonably satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

6. NEGATIVE COVENANTS.~~[-]~~ Until the Commitments have expired or been terminated, all Loans and other Obligations hereunder have been paid or satisfied in full in cash (other than contingent indemnification claims for which a claim has not been asserted), and all Letters of Credit shall have expired or terminated and all L/C Disbursements have been reimbursed, each Borrower covenants and agrees with the Agent and the Lenders that:

6.1 Indebtedness and Other Obligations. The Borrowers will not, and will not permit any other member of the Borrower Affiliated Group to, create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness created under the Loan Documents;

(b) Indebtedness set forth in Schedule [6.1]6.1 and any Permitted Refinancing thereof;

(c) Indebtedness of any Borrower or Subsidiary to any other Borrower or Subsidiary, provided, however, that (i) the aggregate amount of Indebtedness due to the Borrowers by Domestic Subsidiaries which are not wholly-owned and which are not Borrowers or Facility Guarantors hereunder, when combined with the amount of Investments set forth in Section [6.4(e)]6.4(e) (i), shall not exceed \$25,000,000 for any Subsidiary and \$100,000,000 in the aggregate from and after the Second Amendment Effective Date (net of any dividends, distributions, returns of capital or repayment of indebtedness by such Subsidiaries to Borrowers or Facility Guarantors) unless the Payment Conditions are met at the time of incurrence thereof, and (ii) the aggregate amount of Indebtedness due to any Borrower by Foreign Subsidiaries, when combined with the amount of Investments in Foreign Subsidiaries set forth in Section 6.4(e)(ii), shall not exceed the limits set forth in Section [6.4(e)]6.4(e)(ii) unless the Payment Conditions are met at the time of incurrence thereof, and further provided in each case that ~~[(A) ]no [Default or ]Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness[, and (B) immediately after giving effect to the incurrence of such Indebtedness and on a pro forma and projected basis for a period of ninety (90) days thereafter, Excess Availability shall be not less than \$80,000,000];~~

(d) Indebtedness of the Borrower Affiliated Group to finance the acquisition of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof or result in an earlier maturity date or decreased weighted average life thereof, provided that the aggregate principal amount of Indebtedness permitted by this clause (d) shall not exceed \$50,000,000 at any time outstanding;

(e) Indebtedness incurred to finance any Real Estate owned by any Borrower or incurred in connection with any sale-leaseback transaction;

(f) Indebtedness under Hedging Agreements, other than for speculative purposes, entered into in the ordinary course of business;

(g) Contingent liabilities under surety, customs or appeal bonds or similar instruments incurred in the ordinary course of business[ ~~in connection with the construction or improvement of stores~~];

(h) (x) Indebtedness of any Foreign Subsidiary to any other Foreign Subsidiary and (y) Indebtedness of any Domestic Subsidiary which is not a Borrower or Facility Guarantor to other Domestic Subsidiaries which are not Borrowers or Facility Guarantors;

(i) Guarantees by any member of the Borrower Affiliated Group of Indebtedness of any other member of the Borrower Affiliated Group, provided that such Indebtedness is otherwise permitted by this Section 6.1;

(j) Indebtedness of any Person that becomes a Subsidiary after the Effective Date, provided that (i) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and (ii) the aggregate outstanding principal amount of Indebtedness permitted by this subsection ~~(j)~~ (j) shall not exceed \$50,000,000 at any time outstanding;

(k) Indebtedness incurred under a letter of credit facility in an amount not to exceed \$25,000,000;

(l) Indebtedness of any ~~Borrower or~~ Foreign Subsidiary ~~to any other Borrower or Subsidiary in connection with the Micromania Acquisition~~; provided that ~~such~~ the aggregate outstanding principal amount of Indebtedness ~~does~~ permitted by this subsection (l) shall not exceed \$~~6~~50,000,000 ~~in the aggregate~~ at any time outstanding;

(m) Indebtedness under the Line Letter;

(n) Permitted Senior Debt in an aggregate principal amount not exceeding \$1,000,000,000 at any time outstanding; ~~and~~

(o) other unsecured Indebtedness in an aggregate principal amount not exceeding \$250,000,000 at any time outstanding; provided that in the event that a member of the Borrower Affiliated Group undertakes a Permitted Acquisition or Permitted Foreign Acquisition, the total consideration paid or payable in connection therewith is greater than \$500,000,000, such Person may incur other unsecured Indebtedness in an aggregate amount not exceeding \$500,000,000 for the payment of the purchase price for all such Permitted Acquisitions or Permitted Foreign Acquisitions, as applicable, provided further that no Default or Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness; and

(p) Permitted Refinancings in respect of Indebtedness incurred pursuant to clauses (b), (d), (e), (j), (m) and (o) above.

6.2 Liens. The Borrowers will not, and will not permit any other member of the Borrower Affiliated Group to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created under the Loan Documents;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of any Borrower or other member of the Borrower Affiliated Group set forth in Schedule ~~6.2~~6.2, provided that (i) such Lien shall not apply to any other property or asset of such Person and (ii) such Lien shall secure only those obligations that it secures as of the Effective Date, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(d) Liens on fixed or capital assets acquired by any Borrower or other member of the Borrower Affiliated Group, and the proceeds thereof, provided that (i) such Liens secure Indebtedness permitted by Section ~~[6.1(d)]~~6.1(d), (ii) such Liens and the Indebtedness secured thereby are incurred on or prior to or within 60 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring such fixed or capital assets, (iv) such Liens shall not apply to any other property or assets of the Borrowers or other member of the Borrower Affiliated Group, and (v) ~~[at the Agent's option with respect to Liens which arise after the Effective Date, the Agent shall have entered into an intercreditor]~~if the assets subject to such Liens are material to the business of the Borrowers taken as a whole, upon the reasonable request of the Agent, the Borrowers will use commercially reasonable efforts to obtain an access agreement with the holder of such Lien on terms reasonably satisfactory to the Agent;

(e) Liens to secure Indebtedness permitted by Section ~~[6.1(e)]~~6.1(e) provided that such Liens shall not apply to any property or assets of the Borrowers other than the Real Estate so financed or which is the subject of a sale-leaseback transaction;

(f) Liens on cash collateral to secure Indebtedness permitted by Section ~~[6.1(k)]~~6.1(k);

(g) Security interests existing on any property or assets (other than Inventory, Accounts, and the Proceeds thereof) prior to the acquisition thereof by any member of the Borrower Affiliated Group or existing on any property or assets (other than Inventory, Accounts, and the Proceeds thereof) of any Person that becomes a Subsidiary after the Effective Date prior to the time such Person becomes a Subsidiary, provided that (i) such security interests secure Indebtedness permitted by Section ~~[6.1(j)]~~6.1(j), (ii) such security interests are not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as applicable, (iii) such security interests shall not apply to any other property or assets of the Borrower or any Subsidiary and (iv) such security interests shall secure only the Indebtedness that such security interests secure on the date of such acquisition or the date such Person becomes a Subsidiary, as applicable, and any extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof; ~~and~~

(h) Liens on the assets of Foreign Subsidiaries to secured Indebtedness permitted pursuant to Section 6.1(l);

(i) [~~(h)~~] Liens to secure Permitted Senior Debt as described in the definition thereof[-]; and

(j) Liens to secure Permitted Refinancings incurred pursuant to Section 6.1(p) to the extent permitted pursuant to the definition thereof.

6.3 Fundamental Changes. [~~(a)~~] (a) The Borrowers shall not, and shall not permit any other member of the Borrower Affiliated Group to, liquidate, merge or consolidate into or with any other Person or enter into or undertake any plan or agreement of liquidation, merger or consolidation with any other Person, provided that (i) a Borrower may merge with another company in connection with a Permitted Acquisition or Permitted Foreign Acquisition if such Borrower is the surviving company, (ii) any wholly-owned Subsidiary of any Borrower may merge or consolidate into or with such Borrower or any other wholly-owned Subsidiary of such Borrower if no Default or Event of Default has occurred and is continuing or would result from such merger and if such Borrower or such Subsidiary is the surviving company, (iii) a Subsidiary of any Borrower may merge into another entity in connection with a Permitted Acquisition or Permitted Foreign Acquisition if, upon consummation of such merger, the surviving entity shall be a direct or indirect wholly-owned Subsidiary of such Borrower and, if the surviving entity is a Domestic Subsidiary, a party to the Security Documents, (iv) any Domestic Subsidiary may merge into any other Domestic Subsidiary, (v) any Foreign Subsidiary may merge into any other Foreign Subsidiary and (vi) any Subsidiary (other than a Borrower) may liquidate or dissolve if the Lead Borrower determines in good faith that such liquidation is in the best interests of the Borrowers and would not have a Material Adverse Effect.

(a) The Borrowers shall not, and shall not permit any other member of the Borrower Affiliated Group to, engage to any material extent in any business other than businesses of the type conducted by the Borrower Affiliated Group on the Effective Date and businesses reasonably related or complementary thereto, except that the Borrowers or any other member of the Borrower Affiliated Group may withdraw from any business activity which such Person's board of directors reasonably deems unprofitable or unsound, provided that promptly after such withdrawal, the Lead Borrower shall provide the Agent with written notice thereof.

6.4 Investments, Loans, Advances, Guarantees and Acquisitions. The Borrowers shall not, and shall not permit any other member of the Borrower Affiliated Group to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any [~~capital stock~~] Equity Interests, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (each of the foregoing, an "Investment"), except for:

(a) Permitted Acquisitions and Permitted Foreign Acquisitions;

(b) Permitted Investments;

(c) Investments existing on the Second Amendment Effective Date, and set forth on Schedule [6.4]6.4, to the extent such investments would not be permitted under any other clause of this Section;

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

(e) Investments by a Borrower [~~in such Borrower's Subsidiaries~~] or another member of the Borrower Affiliated Group in any Subsidiary of a member of the Borrower Affiliated Group, provided, however, that [~~(i) the aggregate amount of~~] Investments [~~in~~] made by Borrowers or Facility Guarantors in (i) Domestic Subsidiaries which are not wholly-owned and which are not Borrowers or Facility Guarantors hereunder, when combined with the amount of Indebtedness set forth in Section [6.1(e)]6.1(c) (i), shall not at any one time exceed \$25,000,000 for any such Subsidiary and \$100,000,000 in the aggregate from and after the Second Amendment Effective Date (net of any dividends, distributions, returns of capital or repayment of indebtedness by such Subsidiaries to Borrowers or Facility Guarantors) unless the Payment Conditions are met at the time such Investment is made, and (ii) [the aggregate amount of Investments in] Foreign Subsidiaries, when combined with the amount of Indebtedness due from Foreign Subsidiaries set forth in Section [6.1(e)]6.1(c)(ii), may not at any time exceed (net of any dividends, distributions, returns of capital or repayment of indebtedness by Foreign Subsidiaries to Borrowers or Facility Guarantors) (i) \$125,000,000 per annum or (ii) \$500,000,000 in the aggregate from and after the Second Amendment Effective Date unless the Payment Conditions are met at the time such Investment is made, and further provided in each case that [(A) ]no [Default or ]Event of Default has occurred and is continuing or would result from such Investment[~~, and (B) immediately after giving effect to such Investment and on a pro forma basis for a period of ninety (90) days thereafter, Excess Availability shall be not less than \$80,000,000;~~ ];

(f) contributions of Equity Interests made by a Borrower or Facility Guarantor to another member of the Borrower Affiliated Group; provided that such Equity Interests are in an entity that is not a Borrower or Facility Guarantor;

(g) [~~(F) ]Guarantees by a Borrower or Facility Guarantor of Indebtedness and other obligations of another Borrower or Facility Guarantor; and~~

(h) [~~(G) ]loans or advances to employees for the purpose of travel, entertainment or relocation in the ordinary course of business and consistent with past practices, not exceeding \$1,000,000 in the aggregate at any time outstanding; provided, that no such advances to any single employee shall exceed \$250,000 in the aggregate at any time outstanding.~~

6.5 Asset Sales. The Borrowers will not, and will not permit any other member of the Borrower Affiliated Group to, sell, transfer, lease or otherwise dispose of any asset, including any [~~capital stock~~] Equity Interests, nor will any Borrower issue any additional shares of its [~~capital stock or other ownership interest~~] Equity Interests in such Borrower, except:

(a) (i) sales of Inventory in the ordinary course of business, or (ii) used, obsolete or surplus equipment, or (iii) Permitted Investments, in each case in the ordinary course of business;

(b) sales, transfers and dispositions among the Borrower Affiliated Group (excluding, however, any sales, transfers and dispositions of Inventory or proceeds thereof, from any Borrower or any Facility Guarantor except to Borrower or another Facility Guarantor), provided that any such sales, transfers or dispositions involving a Subsidiary that is not a Borrower or a Facility Guarantor shall be made in compliance with Section 6.8;

(c) sales, transfers and dispositions by ~~the Lead Borrower of the capital stock of~~ (i) the Borrowers or Facility Guarantors of any Equity Interests of (x) any member of the Borrower Affiliated Group that does not own Eligible Inventory or the proceeds thereof[-], (y) any Excluded Subsidiary and (z) Latamel, and (ii) any other member of the Borrower Affiliated Group that is not a Borrower or a Facility Guarantor of any Equity Interests of any of its Subsidiaries that is not a Borrower or Facility Guarantor;

(d) sales or other transfers of assets pursuant to store closures; provided that in any fiscal year, Borrowers shall not close more than ten percent (10%) of Borrowers' stores open at the beginning of such fiscal year;

(e) sales, transfers, or dispositions of assets, which in the reasonable determination of the Lead Borrower, are duplicative and unnecessary as a result of a Permitted Acquisition or Permitted Foreign Acquisition; provided that (x) such assets are no longer necessary for the conduct of the Borrowers' business, and (y) the aggregate consideration for such sales, transfers or dispositions after the Second Amendment Effective Date shall not exceed \$75,000,000;

(f) other sales, transfers, or dispositions of assets not in the ordinary course of business and not pursuant to store closures; provided that (x) no Default or Event of Default then exists or would arise therefrom and (y) the aggregate consideration for such sales, transfers or dispositions after the Second Amendment Effective Date shall not exceed \$75,000,000;

(g) sales or issuances by the Lead Borrower of any of its [~~capital stock~~ Equity Interests] that does not result in a Change of Control; [~~and~~]

(h) sales or issuances of [~~capital stock~~ Equity Interests] to any Borrower; and

(i) sales, transfers or dispositions of any Intellectual Property that the Lead Borrower has determined is not used or useful in the business of the Borrower Affiliated Group; provided that if such sales, transfers or dispositions include the sales, transfers or dispositions of Intellectual Property used or useful in connection with any Collateral of the type included in the Borrowing Base and related assets and proceeds thereof (as determined by the Agent in its Permitted Discretion), the purchaser, assignee or other transferee thereof shall agree in writing to be bound by a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent;

provided that all sales, transfers, leases and other dispositions of Inventory and the proceeds thereof shall be made for cash consideration, and further provided that that all sales, transfers, leases and other dispositions permitted hereby (other than sales, transfers and other dispositions permitted under clauses (a)(ii), ~~(b)~~(b) (subject to the proviso therein), (g) and (h)) shall be made at arm's length and for fair value; and further provided that the authority granted hereunder may be terminated in whole or in part by the Agent upon the occurrence and during the continuance of any Event of Default.

6.6 Restrictive Agreements. The Borrowers will not, and will not permit any other member of the Borrower Affiliated Group to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of any member of the Borrower Affiliated Group to create, incur or permit to exist any Lien upon any of its property or assets or (b) the ability of any member of the Borrower Affiliated Group to pay dividends or other distributions with respect to any shares of its ~~capital stock~~Equity Interests or to make or repay loans or advances to the Borrowers or any other member of the Borrower Affiliated Group or to guarantee Indebtedness of the Borrowers or any other member of the Borrower Affiliated Group, provided that (i) the foregoing shall not apply to restrictions and conditions imposed by Applicable Law or by any Loan Document, (ii) the foregoing shall not apply to customary restrictions and conditions imposed by any indenture or other debt instrument that the Borrowers or any other member of the Borrower Affiliated Group may be party to in connection with Indebtedness permitted under clauses (n) or (o) of Section ~~6.1~~6.1, so long as such restrictions and conditions do not restrict or prohibit the granting of Liens to secure the Obligations under the Loan Documents, (iii) the foregoing restrictions shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided that such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases restricting the assignment or subleasing thereof.

#### 6.7 Restricted Payments; Certain Payments of Indebtedness.

(a) The Borrowers will not, and will not permit any other member of the Borrower Affiliated Group to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except as long as no Default or Event of Default exists or would arise therefrom, and after giving effect thereto, the Borrowers are Solvent (i) any Borrower may declare and pay dividends with respect to its ~~capital stock~~Equity Interests payable solely in additional shares of their common stock, (ii) the Subsidiaries of the ~~Lead Borrower~~Borrowers may declare and pay cash dividends with respect to their ~~capital stock~~Equity Interests, and (iii) only if the Restricted Payment Conditions are then satisfied, the Lead Borrower may repurchase its ~~capital stock~~Equity Interests and/or declare and pay cash dividends to its shareholders.

(b) The Borrowers will not at any time, and will not permit any other member of the Borrower Affiliated Group to make or agree to pay or make, directly or indirectly, any payment

or other distribution (whether in cash securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness (any such payment, distribution, sinking fund or deposit in respect of Indebtedness, a “Restricted Debt Payment”), except:

- (i) payment of regularly scheduled interest and principal payments as and when due in respect of, and mandatory prepayments required pursuant to the terms of, any Indebtedness permitted under Section 6.1;
- (ii) ~~[only]~~any Restricted Debt Payment, if the Payment Conditions are satisfied~~[-prepayments of Permitted Senior Debt; and];~~
- (iii) Permitted Refinancings of Indebtedness~~[ described in clause (i) above];~~ and
- (iv) Restricted Debt Payments made substantially simultaneously with the proceeds of equity issued by the Lead Borrower.

6.8 Transactions with Affiliates. The Borrowers will not at any time sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions in the ordinary course of business that are at prices and on terms and conditions not less favorable to the Borrowers than could be obtained on an arm's-length basis from unrelated third parties, ~~and~~ (b) transactions between or among the Borrowers and their Subsidiaries not involving any other Affiliate, which would not otherwise violate the provisions of the Loan Documents, and (c) any payments or other transfers made by EB International Holdings, Inc. or another Borrower to Electronics Boutique of Canada Inc. or another Foreign Subsidiary in conjunction with any tax reimbursement agreement pursuant to which EB International Holdings, Inc. or such other Borrower is obligated to reimburse Electronics Boutique of Canada Inc. or such other Foreign Subsidiary for withholding taxes incurred as a result of a conversion of equity or retained earnings into paid-up capital for the benefit of EB International Holdings, Inc. or such other Borrower.

6.9 Additional Subsidiaries. The Borrowers will not, and will not permit any other member of the Borrower Affiliated Group to, create any additional Subsidiary unless no Default or Event of Default would arise therefrom and the requirements of Section 5.14 are satisfied.

6.10 Amendment of Material Documents. The Borrowers will not, and will not permit any other member of the Borrower Affiliate Group to, amend, modify or waive any of its rights under (a) its certificate of incorporation, by-laws or other organizational documents, or (b) any other instruments, documents or agreements governing Permitted Senior Debt, 2019 Senior Notes, 2021 Senior Notes, and any other Material Indebtedness, in each case to the extent that such amendment, modification or waiver would be adverse to the interests of the Lenders.

6.11 Fixed Charge Coverage Ratio. In the event that a Covenant Compliance Event has occurred and is continuing, the Borrowers shall not permit the Fixed Charge Coverage Ratio to be less than 1.0:1.0.

6.12 Environmental Laws. The Borrowers shall not (a) fail to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, or (b) become subject to any Environmental Liability, in each case which is reasonably likely to have a Material Adverse Effect.

6.13 Fiscal Year. The Borrowers shall not change their fiscal year without the prior written consent of the Agent, which consent shall not be unreasonably withheld.

6.14 Sanctions. The Borrowers shall not, directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Agent, Issuing Bank or otherwise) of Sanctions.

6.15 Anti-Corruption Laws. The Borrowers shall not, directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

## 7. EVENTS OF DEFAULT.

7.1 Events of Default. If any of the following events (“Events of Default”) shall occur:

(a) the Borrowers shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any L/C Disbursement 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 otherwise;

(b) the Borrowers shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Section) payable under this Agreement or any other Loan Document, within three (3) Business Days when the same shall become due and payable;

(c) any representation or warranty made or deemed made by or on behalf of any Borrower or any other member of the Borrower Affiliated Group in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrowers shall fail to observe or perform any covenant, condition or agreement contained in Sections 2.21, ~~5.1(f)~~5.1(f), 5.4, 5.7, 5.13, or in Section 6;

(e) the Borrowers shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.1(a), 5.1(b), 5.1(c), ~~5.1(d)~~5.1(d), ~~5.1(e)~~5.1(e), 5.2, 5.9, or 5.14 within three (3) Business Days after notice from the Agent to the Lead Borrower that the Borrowers have failed to observe or perform such covenant, condition or agreement;

(f) any Borrower or any other member of the Borrower Affiliated Group shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in clause (a), (b), (c), (d) or (e) of this Section), and such failure shall continue unremedied for a period of 30 days after notice thereof from the Agent to the Lead Borrower;

(g) any Borrower shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness when and as the same shall become due and payable (after giving effect to the expiration of any grace or cure period set forth therein);

(h) (i) any Borrower or any other member of the Borrower Affiliated Group shall fail to perform any material covenant or condition contained in the Line Letter or any other material contract or agreement to which it is party as and when such performance is required (after giving effect to the expiration of any grace or cure period set forth therein); or (ii) any Borrower or any other member of the Borrower Affiliated Group shall fail to perform any material covenant or condition contained in any contract or other agreement between any member of the Borrower Affiliated Group, which failure has a Material Adverse Effect;

(i) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits the holder or holders of any such Material Indebtedness or any trustee or agent on its or their behalf to cause any such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity;

(j) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Borrower or any other member of the Borrower Affiliated Group or its debts, or of a substantial part of its assets, under any Debtor Relief Law or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or any other member of the Borrower Affiliated Group or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for 60 days;

(k) any Borrower or any other member of the Borrower Affiliated Group shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Debtor Relief Law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Section, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator

or similar official for any Borrower or any other member of the Borrower Affiliated Group or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(l) any Borrower or any other member of the Borrower Affiliated Group shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(m) one or more uninsured judgments for the payment of money in an aggregate amount in excess of \$25,000,000 shall be rendered against any Borrower or any other member of the Borrower Affiliated Group or any combination thereof and the same shall remain undischarged for a period of 45 consecutive days during which execution shall not be effectively stayed, or any action shall be successfully legally taken by a judgment creditor to attach or levy upon any material assets of any Borrower or any other member of the Borrower Affiliated Group to enforce any such judgment;

(n) any challenge by or on behalf of any Borrower to the validity of any Loan Document or the applicability or enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto;

(o) any challenge by or on behalf of any other Person to the validity of any Loan Document or the applicability or enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto, in each case, as to which an order or judgment has been entered adverse to the Agent and the Lenders.

(p) any Lien purported to be created under any Security Document shall be asserted by any Borrower or any other member of the Borrower Affiliated Group not to be a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document, except as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents;

(q) a Change in Control shall occur;

(r) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrowers in an aggregate amount exceeding \$25,000,000;

(s) the occurrence of any uninsured loss to any material portion of the Collateral;

(t) the indictment of any Borrower or any other member of the Borrower Affiliated Group, under any federal, state, municipal, and other civil or criminal statute, rule, regulation, order, or other requirement having the force of law where the relief, penalties, or remedies sought or available include the forfeiture of any assets of any Borrower or any other member of the Borrower Affiliated Group having a fair market value in excess of \$25,000,000;

(u) the imposition of any stay or other order against any Borrower or any other member of the Borrower Affiliated Group, the effect of which (i) is to restrain in any material way the conduct by the Borrower Affiliated Group, taken as a whole, of their business in the ordinary course and (ii) would have a Material Adverse Effect; or

(v) except as otherwise permitted hereunder, the determination by any Borrower or any other member of the Borrower Affiliated Group, whether by vote of such Person's board of directors or otherwise to: suspend the operation of such Person's business in the ordinary course, liquidate all or a material portion of such Person's assets or store locations, or employ an agent or other third party to conduct any so-called store closing, store liquidation or "Going-Out-Of-Business" sales.

then, and in every such event (other than an event with respect to each Borrower or any other member of the Borrower Affiliated Group described in clause (j) or (k) of this Section), and at any time thereafter during the continuance of such event, the Agent may, and at the request of the Required Lenders shall, by notice to the Lead Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (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), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers; and (iii) require the Borrowers to furnish cash collateral in an amount equal to 105% of the Letter of Credit Outstandings, and in case of any event with respect to any Borrower or any other member of the Borrower Affiliated Group described in clause (j) or (k) of this Section, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers.

7.2 Remedies on Default. In case any one or more of the Events of Default shall have occurred and be continuing, and whether or not the maturity of the Loans shall have been accelerated pursuant hereto, the Agent may proceed to protect and enforce its rights and remedies under this Agreement, the Notes or any of the other Loan Documents by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or

otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Agent or the Lenders. No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law.

7.3 Application of Proceeds. After the occurrence of an Event of Default and acceleration of the Obligations, all proceeds realized from any Borrower or on account of any Collateral shall be applied as follows:

FIRST, to payment of that portion of the Obligations (excluding Obligations set forth in clause (c) of the definition thereof) constituting fees and indemnities due to the Agent, the Lenders and the Issuing Bank under the Loan Documents, and the payment of all reasonable costs and expenses incurred by the Agent in connection with such collection or sale or otherwise in connection with this Agreement or any of the Obligations, including all court costs and the reasonable fees and expenses of its agents and legal counsel, the repayment of all advances made by the Agent hereunder or under any other Loan Document on behalf of any Borrower or Facility Guarantor and any other reasonable costs or expenses incurred in connection with the exercise of any right or remedy hereunder, under any other Loan Document;

SECOND, to the payment of accrued and unpaid interest and principal on the Swingline Loans;

THIRD, to the payment of accrued and unpaid interest on the Revolving Loans;

FOURTH, pro rata to the payment of outstanding principal on the Revolving Loans;

FIFTH, to the Cash Collateral Account as collateral for Letter of Credit Outstandings up to 105% thereof;

SIXTH, to the payment of all Obligations of the Borrowers and Facility Guarantors set forth in clause (c)(i) of the definition of Obligations;

SEVENTH, to the payment of all Obligations of the Borrowers and Facility Guarantors set forth in clause (c)(ii) of the definition of Obligations; ~~and~~

EIGHTH, to the payment of all Obligations of the Foreign Subsidiaries set forth in clause (c)(ii) of the definition of Obligations;

NINTH, to payment of all other Obligations, ratably among the Credit Parties in proportion to the respective amounts described in this clause Ninth held by them; and

TENTH, to the Borrowers, their successors or assigns, or as a court of competent jurisdiction may otherwise direct.

Notwithstanding the foregoing, Excluded Swap Obligations with respect to any Borrower or Facility Guarantor shall not be paid with amounts received from such Borrower or Facility

Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other [~~Loan Parties~~]Borrowers to preserve the allocation to Obligations otherwise set forth above in this Section.

## 8. THE AGENT.

8.1 Administration by the Agent. Each Lender and the Issuing Bank hereby irrevocably designate Bank of America as Agent under this Agreement and the other Loan Documents. The general administration of the Loan Documents shall be by the Agent. The Lenders and the Issuing Bank each hereby irrevocably authorizes the Agent (i) to enter into the Loan Documents to which it is a party and (ii) at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Loan Documents and the Notes as are delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto. The Agent shall have no duties or responsibilities except as set forth in this Agreement and the remaining Loan Documents, nor shall it have any fiduciary relationship with any Lender, and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into the Loan Documents or otherwise exist against the Agent.

8.2 The Collateral. Each Lender and the Issuing Bank hereby irrevocably authorize the Agent to enter into the Security Documents and the other Loan Documents to which it is a party and to perform its duties and obligations thereunder, together with all powers reasonably incidental thereto, and (iii) agree and consent to all of the provisions of the Security Documents. All Collateral shall be held or administered by the Agent (or its duly-appointed agent) for its benefit and for the ratable benefit of the other Credit Parties. Any proceeds received by the Agent from the foreclosure, sale, lease or other disposition of any of the Collateral and any other proceeds received pursuant to the terms of the Security Documents or the other Loan Documents shall be applied by the Agent as provided in Sections 2.18, 2.22, or [~~7.3~~]7.3, as applicable. The Agent shall have no duties or responsibilities except as set forth in this Agreement and the remaining Loan Documents, nor shall it have any fiduciary relationship with any Lender, and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into the Loan Documents or otherwise exist against the Agent.

8.3 Agreement of Required Lenders or Supermajority Lenders. Upon any occasion requiring or permitting an approval, consent, waiver, election or other action on the part of only the Required Lenders or the Supermajority Lenders, as applicable, action shall be taken by the Agent for and on behalf or for the benefit of all Lenders upon the direction of the Required Lenders or the Supermajority Lenders, as applicable, and any such action shall be binding on all Lenders. No amendment, modification, consent, or waiver shall be effective except in accordance with the provisions of Section 9.2.

Upon the occurrence of an Event of Default, the Agent shall take such action with respect thereto as may be reasonably directed by the Required Lenders or Supermajority Lenders, as applicable; provided that unless and until the Agent shall have received such directions, the Agent may (but shall not be obligated to) take such action as it shall deem advisable in the best interests of the Lenders. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that the Agent's compliance with such directions would be unlawful.

#### 8.4 Liability of Agent.

(a) The Agent, when acting on behalf of the Lenders and the Issuing Banks, may execute any of its duties under this Agreement by or through any of its officers, agents and employees, and none of the Agent nor its directors, officers, agents or employees shall be liable to the Lenders or the Issuing Bank or any of them for any action taken or omitted to be taken in good faith, or be responsible to the Lenders or the Issuing Bank or to any of them for the consequences of any oversight or error of judgment, or for any loss, except to the extent of any liability imposed by law by reason of the Agent's own gross negligence or willful misconduct. The Agent and its directors, officers, agents and employees shall in no event be liable to the Lenders or the Issuing Bank or to any of them for any action taken or omitted to be taken by them pursuant to instructions received by them from the Required Lenders or the Supermajority Lenders, as applicable, or in reliance upon the advice of counsel selected by it. Without limiting the foregoing, none of the Agent, nor any of its directors, officers, employees, or agents (A) shall be responsible to any Lender or the Issuing Bank for the due execution, validity, genuineness, effectiveness, sufficiency, or enforceability of, or for any recital, statement, warranty or representation in, this Agreement, any Loan Document or any related agreement, document or order, or (B) shall be required to ascertain or to make any inquiry concerning the performance or observance by any Borrower of any of the terms, conditions, covenants, or agreements of this Agreement or any of the Loan Documents, or (C) shall be responsible to any Lender or the Issuing Bank for the state or condition of any properties of the Borrowers or any other obligor hereunder constituting Collateral for the Obligations of the Borrowers hereunder, or any information contained in the books or records of the Borrowers; or (D) shall be responsible to any Lender or the Issuing Bank for the validity, enforceability, collectibility, effectiveness or genuineness of this Agreement or any other Loan Document or any other certificate, document or instrument furnished in connection therewith; or (E) shall be responsible to any Lender or the Issuing Bank for the validity, priority or perfection of any lien securing or purporting to secure the Obligations or the value or sufficiency of any of the Collateral.

(b) The Agent may execute any of its duties under this Agreement or any other Loan Document by or through their agents or attorneys-in-fact, and shall be entitled to the advice of counsel concerning all matters pertaining to their rights and duties hereunder or under the Loan Documents. The Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) None of the Agent nor any of its directors, officers, employees, or agents shall have any responsibility to the Borrowers on account of the failure or delay in performance or breach by any Lender (other than by the Agent in its capacity as a Lender) or the Issuing Bank of any of their respective obligations under this Agreement or the Notes or any of the Loan Documents or in connection herewith or therewith.

(d) The Agent shall be entitled to rely, and shall be fully protected in relying, upon any notice, consent, certificate, affidavit, or other document or writing believed by it to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon the advice and statements of legal counsel (including, without, limitation, counsel to the Borrowers), independent accountants and other experts selected by the Agent. The Agent shall be

fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders or the Supermajority Lenders, as applicable, as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of the taking or failing to take any such action.

8.5 Notice of Default. The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Agent has actual knowledge of the same or has received notice from a Lender or the Lead Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Agent obtains such actual knowledge or receives such a notice, the Agent shall give prompt notice thereof to each of the Lenders. The Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Lenders.

8.6 Lenders' Credit Decisions. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender, and based on the financial statements prepared by the Borrowers and such other documents and information as it has deemed appropriate, made its own credit analysis and investigation into the business, assets, operations, property, and financial and other condition of the Borrowers and has made its own decision to enter into this Agreement and the other Loan Documents. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in determining whether or not conditions precedent to closing any Loan hereunder have been satisfied and in taking or not taking any action under this Agreement and the other Loan Documents.

8.7 Reimbursement and Indemnification. Each Lender agrees (i) to reimburse (x) the Agent for such Lender's Commitment Percentage of any expenses and fees incurred by the Agent for the benefit of the Lenders or the Issuing Bank under this Agreement, the Notes and any of the Loan Documents, including, without limitation, counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders or the Issuing Bank, and any other expense incurred in connection with the operations or enforcement thereof not reimbursed by the Borrowers and (y) the Agent for such Lender's Commitment Percentage of any expenses of the Agent incurred for the benefit of the Lenders or the Issuing Bank that the Borrowers have agreed to reimburse pursuant to Section 9.3 and has failed to so reimburse and (ii) to indemnify and hold harmless the Agent and any of its directors, officers, employees, or agents, on demand, in the amount of such Lender's Commitment Percentage, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against it or any of them in any way relating to or arising out of this Agreement, the Notes or any of the Loan Documents or any action taken or omitted by it or any of them under this Agreement, the Notes or any of the Loan Documents to the extent not reimbursed by the Borrowers (except such as shall result from its gross

negligence or willful misconduct). The provisions of this Section [8-7]8.7 shall survive the repayment of the Obligations and the termination of the Commitments.

8.8 Rights of Agent. It is understood and agreed that Bank of America shall have the same rights and powers hereunder (including the right to give such instructions) as the other Lenders and may exercise such rights and powers, as well as its rights and powers under other agreements and instruments to which it is or may be party, and engage in other transactions with the Borrowers, as though it were not the Agent of the Lenders under this Agreement. Without limiting the foregoing, the Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of commercial or investment banking, trust, advisory or other business with the Borrowers and their Subsidiaries and Affiliates as if it were not the Agent hereunder.

8.9 Notice of Transfer. The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Loans for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in Section 9.5(b).

8.10 Successor Agent. The Agent may resign at any time by giving five (5) Business Days' written notice thereof to the Lenders, the Issuing Bank and the Lead Borrower. Upon any such resignation of the Agent, the Required Lenders shall have the right to appoint a successor Agent, which so long as there is no Default or Event of Default shall be reasonably satisfactory to the Lead Borrower (whose consent shall not be unreasonably withheld or delayed). If no successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment, within 30 days after the retiring Agent's giving of notice of resignation, the retiring Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Agent which shall be a Lender or a commercial bank (or affiliate thereof) organized under the laws of the United States of America or of any State thereof and having a combined capital and surplus of a least \$500,000,000 which, so long as there is no Default or Event of Default, shall be reasonably satisfactory to the Lead Borrower (whose consent shall not be unreasonably withheld or delayed). Upon the acceptance of any appointment as Agent by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Agent under this Agreement.

#### 8.11 Reports and Financial Statements.

(a) Promptly after receipt thereof from the Borrowers, the Agent shall remit to each Lender copies of all financial statements required to be delivered by the Borrowers hereunder, all commercial finance examinations and appraisals of the Collateral received by the Agent and all notices received by the Agent under Section [5-2]5.2 hereof, and a copy of any Borrowing Base Certificate so received (collectively, the "Reports").

(b) By signing this Agreement, each Lender:

(i) agrees to furnish the Agent with a summary of all Bank Products (including, without limitation, all Hedging Agreements) and Cash Management Services due from a Borrower or Facility Guarantor or to become due to such Lender from time to time. In connection with any distributions to be made hereunder, the Agent shall be entitled to assume that no amounts are due from a Borrower or Facility Guarantor to any Lender on account of any Bank Products or Cash Management Services unless the Agent has received written notice thereof from such Lender;

(ii) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy of the Reports, and shall not be liable for any information contained in any Report;

(iii) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Borrower Affiliated Group and will rely significantly upon the Borrowers<sup>[2]</sup> books and records, as well as on representations of the Borrowers<sup>[2]</sup> personnel;

(iv) agrees to keep all Reports confidential in accordance with the provisions of Section ~~[9.17]~~9.17 hereof; and

(v) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Obligations that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender<sup>[1]</sup>'s participation in, or the indemnifying Lender<sup>[1]</sup>'s purchase of, a Loan or Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

#### 8.12 Defaulting Lender.

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

(i) Waivers and Amendments. Such Defaulting Lender<sup>[2]</sup>'s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders", "Supermajority Lenders" and Section ~~[9]9.2.[2.]~~

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section ~~[7.3]~~7.3 or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section ~~[9.9]~~9.9 shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Bank or Swingline Lender hereunder; third, to cash collateralize the Issuing Bank~~[2]~~'s Fronting Exposure with respect to such Defaulting Lender; fourth, as the Lead Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; fifth, if so determined by the Agent and the Lead Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender~~[2]~~'s potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize the Issuing Bank~~[2]~~'s future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; sixth, to the payment of any amounts owing to the Lenders, the Issuing Bank or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Bank or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender~~[2]~~'s breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender~~[2]~~'s breach of its obligations under this Agreement; and eighth, to such 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 or Letter of Credit Outstandings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section ~~[4.2]~~4.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and Letter of Credit Outstandings owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or Letter of Credit Outstandings owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letter of Credit Outstandings and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section ~~[8.12(a)(iv)]~~8.12(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section ~~[8.12(a)(ii)]~~8.12(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section ~~[2.12]~~2.12 for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Commitment Percentage of the stated amount of Letters of Credit for which it has provided cash collateral pursuant hereto.

(C) With respect to any fee payable under Section ~~[2.12]~~2.12 or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Outstandings or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Bank and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Commitment Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letter of Credit Outstandings and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Commitment Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section ~~[4.2]~~4.2 are satisfied at the time of such reallocation (and, unless the Borrowers shall have otherwise notified the Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate outstanding amount of Obligations of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to them hereunder or under Applicable Law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second, cash collateralize the Issuing Bank's Fronting Exposure in accordance with the procedures set forth in Section ~~[2]~~2.6. ~~[6.]~~

(b) Defaulting Lender Cure. If the Lead Borrower, the Agent, the Swingline Lender and the Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a pro rata basis by the Lenders in accordance with their Commitment Percentages (without giving effect to Section ~~[8.12(a)(iv)]~~8.12(a)(iv)), whereupon such Lender will

cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

8.13 Syndication Agent and Documentation Agent. Neither the Syndication Agent or any co-Documents Agent, in their capacity as such, shall have any obligation, responsibility or required performance hereunder and shall not become liable in any manner to any party hereto. No party shall have any obligation or liability, or owe any performance, hereunder, to the Syndication Agent or co-Documents Agent in their capacity as such.

8.14 Agent for Perfection. Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Agent and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other Applicable Law of the United States can be perfected only by possession or control. Should any Lender (other than the Agent) obtain possession or control of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

8.15 Relation Among the Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

8.16 Collateral and Guaranty Matters. The Credit Parties irrevocably authorize the Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Commitments and (A) payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted) and (B)(x) the expiration or termination of all Letters of Credit, or (y) the deposit of cash collateral with the Agent in an amount equal to 105% of the Letter of Credit Outstandings, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the applicable Lenders in accordance with Section 9.2;

(b) to subordinate any Lien on any property granted to or held by the Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.2(d); and

(c) to release any Facility Guarantor from its obligations under the Facility Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Agent at any time, the applicable Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or

to release any Facility Guarantor from its obligations under the Facility Guaranty pursuant to this Section ~~[8.16]~~8.16. In each case as specified in this Section ~~[8.16]~~8.16, the Agent will, at the Borrowers<sup>[2]</sup> expense, execute and deliver to the applicable Borrower or Facility Guarantor such documents as such party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Facility Guarantor from its obligations under the Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section ~~[8.16]~~8.16.

## 9. MISCELLANEOUS.

9.1 Notices. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy (to the extent a telecopy number is provided below), as follows:

(a) if to any Borrower, to it at GameStop Corp., 625 Westport Parkway, Grapevine, Texas 76051, Attention:[~~Robert Lloyd,~~] Chief Financial Officer [~~(Telecopy No. (817) 424-2820)~~] and at GameStop Corp., 6~~[00 Willowbrook Lane, Suite 622, West Chester, Pennsylvania 19382, Attention: Daniel Kaufman, Senior Vice President and~~]25 Westport Parkway, Grapevine, Texas 76051, Attention: General Counsel[ ~~(Telecopy No. (484) 991-1944), with a copy to Bryan Cave LLP, 1290 Avenue of the Americas, New York, New York 10104, Attention: Jay Dorman~~], with a copy to Pepper Hamilton LLP, 3000 Two Logan Square, Eighteenth and Arch Streets, Philadelphia, Pennsylvania 19103-2799, Attention: J. Bradley Boericke, Esquire (Telecopy No. (21~~[2]5~~) [~~54~~]981-~~[1]4~~[18]750);

(b) if to the Agent, to Bank of America, N.A., 100 Federal Street, Boston, Massachusetts 02110, Attention of [~~Stephen Garvin~~]Andrew Cerussi (Telecopy No. (617) [~~4~~]3~~[4-6]~~10-268~~[5]6~~), with a copy to [~~Riemer & Braunstein LLP, Three Center Plaza~~]Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110~~[8]~~, Attention: [~~David~~]Marjorie S. BermanCridler, Esquire (Telecopy No. (617) [~~880-~~]34~~[56]~~1-7701);

(c) if to any other Lender, to it at its address (or telecopy number) set forth on the signature pages hereto or on any Assignment and Acceptance for such Lender.

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

### 9.2 Waivers; Amendments.

(a) No failure or delay by the Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise

thereof or the exercise of any other right or power. The rights and remedies of the Agent, the Issuing Bank 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 any Loan Document or consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or, in the case of any other Loan Document (other than any Loan Document under clause (i) or (ii) of the definition thereof), pursuant to an agreement or agreements in writing entered into by the Agent and the Borrowers that are parties thereto, in each case with the consent of the Required Lenders, provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender or the Total Commitments (except as provided in ~~Section 2.29~~ Sections 2.29 and 2.30) without the consent of each Lender affected thereby, (ii) reduce the principal amount of any Loan or L/C Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or L/C Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, without the written consent of each Lender affected thereby, or postpone the scheduled date of expiration of the Commitments or the Maturity Date, without the written consent of all Lenders affected thereby; (iv) change Sections 2.18, 2.21, 2.22 or ~~7.3~~ 7.3, without the written consent of each Lender, (v) change any of the provisions of this Section 9.2 or the definition of the term “Required Lenders”, “Supermajority Lenders” or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender, (vi) release any Borrower owning Inventory or the proceeds thereof from its obligations under any Loan Document, or limit its liability in respect of such Loan Document, without the written consent of each Lender, (vii) except for sales described in Section 6.5 or as permitted in the Security Documents, release any material portion of the Collateral from the Liens of the Security Documents, without the written consent of each Lender, (viii) increase any advance rate percentage set forth in the definition of “Borrowing Base” without the written consent of each Lender; or otherwise change the definition of the term “Borrowing Base” or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrowers would be increased without the written Consent of the Supermajority Lenders, provided that the foregoing shall not limit the discretion of the Agent to change, establish or eliminate any Reserves in its Permitted Discretion, (ix) change the definition of “Permitted Overadvance”, without the written consent of each Lender, (x) subordinate the Obligations hereunder, or, other than with respect to the Permitted Senior Debt as provided herein, the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the prior written consent of each Lender, and provided further that no such agreement shall amend, modify or otherwise

affect the rights or duties of the Agent or the Issuing Bank or Swingline Lender without the prior written consent of the Agent or the Issuing Bank, as the case may be.

(c) Notwithstanding anything to the contrary contained in this Section 9.2, in the event that the Borrowers request that this Agreement or any other Loan Document be modified, amended or waived in a manner which would require the consent of the Lenders pursuant to Section 9.2(b) and such amendment is approved by the Required Lenders, but not by the requisite percentage of the Lenders, the Borrowers, and the Required Lenders shall be permitted to amend this Agreement without the consent of the Lender or Lenders which did not agree to the modification or amendment requested by the Borrowers (such Lender or Lenders, collectively the “Minority Lenders”) to provide for (w) the termination of the Commitment of each of the Minority Lenders, (x) the addition to this Agreement of one or more Eligible Assignees, or an increase in the Commitment of one or more of the Required Lenders, so that the aggregate Commitments after giving effect to such amendment shall be in the same amount as the aggregate Commitments immediately before giving effect to such amendment, (y) if any Loans are outstanding at the time of such amendment, the making of such additional Loans by such new or increasing Lender or Lenders, as the case may be, as may be necessary to repay in full the outstanding Loans (including principal, interest, and fees) of the Minority Lenders immediately before giving effect to such amendment and (z) such other modifications to this Agreement or the Loan Documents as may be appropriate and incidental to the foregoing.

(d) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (x) no provider or holder of any Bank Products or Cash Management Services shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any Borrower or Facility Guarantor, and (y) any Loan Document may be amended and waived with the consent of the Agent at the request of the Lead Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents.

(e) No notice to or demand on any Borrower shall entitle any Borrower to any other or further notice or demand in the same, similar or other circumstances. Each holder of a Note shall be bound by any amendment, modification, waiver or consent authorized as provided herein, whether or not a Note shall have been marked to indicate such amendment, modification, waiver or consent and any consent by a Lender, or any holder of a Note, shall bind any Person subsequently acquiring a Note, whether or not a Note is so marked. No amendment to this Agreement shall be effective against the Borrowers unless signed by the Borrowers.

### 9.3 Expenses; Indemnity; Damage Waiver.

(a) Except as otherwise limited herein, the Borrowers shall jointly and severally pay (i) all reasonable out-of-pocket expenses incurred by the Agent and its Affiliates, including the

reasonable fees, charges and disbursements of counsel for the Agent, outside consultants for the Agent, appraisers, and for commercial finance examinations, in connection with the arrangement of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all reasonable out-of-pocket expenses incurred by the Agent, the Issuing Bank or any Lender, including the reasonable fees, charges and disbursements of any counsel and any outside consultants for the Agent, the Issuing Bank or any Lender, for appraisers, commercial finance examinations, and environmental site assessments, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit; provided that the Lenders who are not the Agent or the Issuing Bank shall be entitled to reimbursement for no more than one counsel representing all such Lenders (absent a conflict of interest in which case the Lenders may engage and be reimbursed for additional counsel).

(b) The Borrowers shall jointly and severally indemnify the Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated hereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the transactions contemplated by the Loan Documents or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by any Borrower or any other member of the Borrower Affiliated Group, or any Environmental Liability related in any way to Borrower or any other member of the Borrower Affiliated Group, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any Affiliate of such Indemnitee (or of any officer, director, employee, advisor or agent of such Indemnitee or any such Indemnitee<sup>[2]</sup>'s Affiliates). In connection with any indemnified claim hereunder, the Indemnitee shall be entitled to select its own counsel and the Borrowers shall promptly pay the reasonable fees and expenses of such counsel. This Section 9.3(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) To the extent that any Borrower fails to pay any amount required to be paid by it to the Agent or the Issuing Bank under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Agent or the Issuing Bank, as the case may be, such Lender's Commitment Percentage of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent or the Issuing Bank.

(d) To the extent permitted by Applicable Law, no party hereto shall assert, and each party hereby waives, any claim against any Borrower or Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions contemplated by the Loan Documents, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

#### 9.4 Designation of Lead Borrower as Borrowers' Agent.

(a) [ ] Each Borrower hereby irrevocably designates and appoints the Lead Borrower as that Borrower's agent to obtain Loans and Letters of Credit hereunder, the proceeds of which shall be available to each Borrower for those uses as those set forth herein. As the disclosed principal for its agent, each Borrower shall be obligated to the Agent and each Lender on account of Loans so made and Letters of Credit so issued hereunder as if made directly by the Lenders to that Borrower, notwithstanding the manner by which such Loans and Letters of Credit are recorded on the books and records of the Lead Borrower and of any Borrower.

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes, guarantees, and agrees to discharge all Obligations of all other Borrowers as if the Borrower so assuming and guarantying were each other Borrower.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Loan. The Lead Borrower shall cause the transfer of the proceeds of each Loan to the (those) Borrower(s) on whose behalf such Loan was obtained. Neither the Agent nor any Lender shall have any obligation to see to the application of such proceeds.

(d) Each of the Borrowers shall remain jointly and severally liable to the Agent and the Lenders for the payment and performance of all Obligations (which payment and performance shall continue to be secured by all Collateral granted by each of the Borrowers) notwithstanding any determination by the Agent to cease making Loans or causing Letters of Credit to be issued to or for the benefit of any Borrower.

(e) The authority of the Lead Borrower to request Loans on behalf of, and to bind, the Borrowers, shall continue unless and until the Agent acts as provided in subparagraph (c), above, or the Agent actually receives

(i) written notice of: (i) the termination of such authority, and (ii) the subsequent appointment of a successor Lead Borrower, which notice is signed by the respective Presidents of each Borrower (other than the President of the Lead Borrower being replaced) then eligible for borrowing under this Agreement; and

(ii) written notice from such successive Lead Borrower (i) accepting such appointment; (ii) acknowledging that such removal and appointment has been effected by the respective Presidents of such Borrowers eligible for borrowing under this Agreement; and (iii) acknowledging that from and after the date of such appointment, the newly appointed Lead Borrower shall be bound by the terms hereof, and that as used herein, the term “Lead Borrower” shall mean and include the newly appointed Lead Borrower.

#### 9.5 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 (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any such attempted assignment or transfer without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it), provided that (i) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, each of the Lead Borrower (but only if no Event of Default then exists), the Agent and the Issuing Bank must give their prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed), (ii) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Agent) shall not be less than \$10,000,000 unless the Agent otherwise consents, (iii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations, (iv) the parties to each assignment shall execute and deliver to the Agent an Assignment and Acceptance, together with, unless waived by the Agent, a processing and recordation fee of \$3,500. Subject to acceptance and recording thereof pursuant to paragraph (d) of this Section, 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<sup>[2]</sup>'s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 9.3). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph 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 (e) of this Section.

(c) The Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices in Boston, Massachusetts a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans and L/C Disbursements 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 Borrowers, the Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Eligible Assignee, the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(e) Any Lender may, without the consent of the Borrowers, the Agent, and the Issuing Bank, sell participations to one or more banks or other entities, other than Borrower or Facility Guarantor or any member of the Borrower Affiliated Group (a "Participant"), in all or a portion of such Lender<sup>[2]</sup>'s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it), provided that (i) such Lender<sup>[2]</sup>'s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender<sup>[2]</sup>'s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation in the Commitments, the Loans and the Letters of Credit Outstandings shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents, provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.2(b) that affects such Participant. Subject to paragraph (f) of this Section and Section 2.28, the Borrowers agree that each Participant shall be entitled to the benefits (and subject to the obligations) of Sections 2.23, 2.25, and 2.26 to the same extent as if it were a

Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.9 as though it were a Lender, provided such Participant agrees to be subject to Sections 2.25(c) and 2.28 as though it were a Lender.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.23 or 2.26 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower<sup>[2]</sup>'s prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.26 unless (i) the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Sections 2.26(e) and 2.26(g) as though it were a Lender and (ii) such Participant is eligible for exemption from the withholding tax referred to therein, following compliance with Sections 2.26(e)<sup>[2]</sup> and 2.26(g). Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 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 or assignee for such Lender as a party hereto.

(h) Notwithstanding any provision to the contrary, any Lender (an "Assigning Lender") may assign to one or more special purpose funding vehicles (each, an "SPV") all or any portion of its funded Loans (without the corresponding Commitment), without the consent of any Person or the payment of a fee, by execution of a written assignment agreement in a form agreed to by such Assigning Lender and such SPV, and may grant any such SPV the option, in such SPV<sup>[2]</sup>'s sole discretion, to provide the Borrowers all or any part of any Loans that such Assigning Lender would otherwise be obligated to make pursuant to this Agreement. Such SPVs shall have all the rights which a Lender making or holding such Loans would have under this Agreement, but no obligations. The Assigning Lender shall remain liable for all its original obligations under this Agreement, including its Commitment (although the unused portion thereof shall be reduced by

the principal amount of any Loans held by an SPV). Notwithstanding such assignment, the Agent and Borrower may deliver notices to the Assigning Lender (as agent for the SPV) and not separately to the SPV unless the Agent and Borrower are requested in writing by the SPV (or its agent) to deliver such notices separately to it. The Borrowers shall, at the request of any Assigning Lender, execute and deliver to such Person as such Assigning Lender may designate, a Note in the amount of such Assigning Lender's original Note to evidence the Loans of such Assigning Lender and related SPV.

9.6 Survival. All covenants, agreements, representations and warranties made by the Borrowers in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.23, 2.26, and 9.3 and Section 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent may require such indemnities and collateral security as it shall reasonably deem necessary or appropriate under the circumstances to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to Bank Products or Cash Management Services, and (z) any Obligations that may thereafter arise under Section ~~9.3~~9.3 hereof.

9.7 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Agent and the Lenders and when the Agent shall have received counterparts hereof that, 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 the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

9.8 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

9.9 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by Applicable 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 obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrowers against any of and all the obligations of the Borrowers now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured and regardless of the adequacy of the Collateral. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender may have.

9.10 Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) The Borrowers agree that any suit for the enforcement of this Agreement or any other Loan Document may be brought in any court of the State of New York sitting in the Borough of Manhattan or any federal court sitting therein as the Agent may elect in its sole discretion and consent to the non-exclusive jurisdiction of such courts. The Borrowers hereby waive any objection which they may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient forum. The Borrowers agree that any action commenced by any Borrower asserting any claim or counterclaim arising under or in connection with this Agreement or any other Loan Document shall be brought solely in a court of the State of New York sitting in the Borough of Manhattan or any federal court sitting therein as the Agent may elect in its sole discretion and consent to the exclusive jurisdiction of such courts with respect to any such action.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.1. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

9.11 WAIVER OF JURY TRIAL [-]. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO

REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.12 Headings. Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.13 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under Applicable Law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with Applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

9.14 Additional Waivers.

(a) The Obligations are joint and several obligations of each Borrower. To the fullest extent permitted by Applicable Law, the obligations of Borrower hereunder shall not be affected by (i) the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Borrower under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement, any other Loan Document, or any other agreement, with respect to any other Borrower of the Obligations under this Agreement, or (iii) the failure to perfect any security interest in, or the release of, any of the security held by or on behalf of the Agent or any other Credit Party.

(b) The obligations of each Borrower hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full in cash of the Obligations), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Borrower hereunder shall not be discharged or impaired or otherwise affected by the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the

Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Borrower or that would otherwise operate as a discharge of any Borrower as a matter of law or equity (other than the payment in full in cash of all the Obligations).

(c) To the fullest extent permitted by Applicable Law, each Borrower waives any defense based on or arising out of any defense of any other Borrower or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Borrower, other than the payment in full in cash of all the Obligations. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Borrower, or exercise any other right or remedy available to them against any other Borrower, without affecting or impairing in any way the liability of any Borrower hereunder except to the extent that all the Obligations have been paid in full in cash. Pursuant to Applicable Law, each Borrower waives any defense arising out of any such election even though such election operates, pursuant to Applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Borrower against any other Borrower, as the case may be, or any security.

(d) Each Borrower is obligated to repay the Obligations as joint and several obligors under this Agreement. Upon payment by any Borrower of any Obligations, all rights of such Borrower against any other Borrower arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior payment in full in cash of all the Obligations and the termination of all Commitments to any Borrower under any Loan Document. In addition, any indebtedness of any Borrower now or hereafter held by any Borrower is hereby subordinated in right of payment to the prior payment in full of the Obligations. Until the Obligations are paid in full, none of the Borrowers will demand, sue for, or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Borrower on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Borrower, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. To the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Revolving Loans made to another Borrower hereunder (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Borrowers in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101 (3[4]2) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning

of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

9.15 Patriot Act. Each Lender hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended (the [u]“Act[u]”), it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of each Borrower and other information that will allow such Lender to identify such Borrower in accordance with the Act. Each Borrower is in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loans or any Letter of Credit 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.

9.16 Foreign Asset Control Regulations. Neither of the advance of the Loans nor the use of the proceeds of any thereof or of any Letter of Credit will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the [u]“Trading With the Enemy Act”[u]) or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the [u]“Foreign Assets Control Regulations”[u]) or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the [u]“Executive Order”[u]) and (b) the Act. Furthermore, none of the Borrowers or their Affiliates (a) is or will become a [u]“blocked person”[u] as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such [u]“blocked person”[u] or in any manner violative of any such order.

9.17 Confidentiality. Each of the Lenders agrees that it will use its best efforts not to disclose without the prior consent of the Borrowers (other than to its employees, auditors, counsel or other professional advisors, to Affiliates or to another Lender if the Lender or such Lender’s holding or parent company in its sole discretion determines that any such party should have access to such information, which party shall be informed of the confidential nature thereof) any information with respect to any Borrower which is furnished pursuant to this Agreement, provided that any Lender may disclose any such information (a) as has become generally available to the public, (b) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state or federal regulatory body having or claiming to have jurisdiction over such Lender or to the Federal Reserve Board or the Federal Deposit Insurance Corporation or similar organizations (whether in the United States or elsewhere) or their successors, (c) as may be required or appropriate in response to any summons or subpoena or in connection with any litigation, provided that if the Lender is able to do so prior to complying with the summons or subpoena, such Lender shall provide the Borrowers with prompt notice of such requested disclosure so that the Borrowers may seek a protective order or other appropriate remedy (nothing contained herein however shall result in such

Lender<sup>[2]</sup>'s non-compliance with Applicable Law), (d) in order to comply with any law, order, regulation or ruling applicable to such Lender, (e) in connection with the enforcement of remedies under this Agreement and the other Loan Documents, and (f) to any prospective transferee in connection with any contemplated transfer of any of the Loans or Notes or any interest therein by such Lender, provided that such prospective transferee agrees to be bound by the provisions of this Section. The Borrowers hereby agree that the failure of a Lender to comply with the provisions of this Section 9.17 shall not relieve the Borrowers of any of their obligations to such Lender under this Agreement and the other Loan Documents. Notwithstanding the foregoing, each Borrower consents to the publication by Agent of advertising material relating to the financing transactions contemplated by this Agreement using any Borrower<sup>[2]</sup>'s or Facility Guarantor<sup>[2]</sup>'s name, product photographs, logo or trademark. The Agent shall provide a draft reasonably in advance of any advertising material to the Lead Borrower for review and comment prior to the publication thereof. The Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

9.18 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Borrowers each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm<sup>[2]</sup>'s-length commercial transaction between the Borrowers and the Facility Guarantors, on the one hand, and the Credit Parties, on the other hand, and each of the Borrowers and the Facility Guarantors is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrowers and the Facility Guarantors or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrowers and the Facility Guarantors with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Borrower or Facility Guarantor or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Borrower or Facility Guarantor or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers and the Facility Guarantors and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Borrowers and the Facility Guarantors has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Borrowers hereby waives and releases, to the

fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

9.19 Existing Credit Agreement Amended and Restated. Upon satisfaction of the conditions precedent to the effectiveness of this Agreement, (a) this Agreement shall amend and restate the Existing Credit Agreement in its entirety and (b) the rights and obligations of the parties under the Existing Credit Agreement shall be subsumed within, and be governed by, this Agreement; provided, however, that the Borrowers hereby agree that (i) the Letter of Credit Outstandings under, and as defined in, the Existing Credit Agreement on the Effective Date shall be Letter of Credit Outstandings hereunder, and (ii) all Obligations of the Borrowers and Facility Guarantors under, and as defined in, the Existing Credit Agreement shall remain outstanding, shall constitute continuing Obligations secured by the Collateral, and this Agreement shall not be deemed to evidence or result in a novation or repayment and reborrowing of such obligations and other liabilities.

9.20 Keepwell. Each Borrower and Facility Guarantor that is a Qualified ECP Guarantor at the time the Facility Guaranty or the grant of a security interest under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor<sup>[2]</sup>'s obligations and undertakings under the Facility Guaranty voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Borrower and Facility Guarantor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a “keepwell, support, or other agreement” for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

9.21 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 Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that **may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document;** or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[balance of page left intentionally blank; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as a sealed instrument as of the day and year first above written.

~~[GAMESTOP CORP.]~~  
~~[GAMESTOP, INC.]~~  
~~[SUNRISE PUBLICATIONS, INC.]~~  
~~[ELBO INC.]~~  
~~[EB INTERNATIONAL HOLDINGS, INC.]~~  
~~[KONGREGATE INC.]~~  
~~[SPAWN LABS, INC.]~~

~~[By: \_\_\_\_\_~~  
~~Name: Robert Lloyd]~~  
~~[Title: Executive Vice President and Chief Financial Officer]~~

~~[GAMESTOP TEXAS LTD.]~~  
~~[SIMPLY MAC, INC.]~~  
~~[SPRING COMMUNICATIONS]~~  
~~[HOLDING, INC.]~~  
~~[GS MOBILE, INC.]~~

~~[By: \_\_\_\_\_~~  
~~Name: Robert Lloyd]~~  
~~Title: Chief Financial Officer]~~

~~[MARKETING CONTROL SERVICES, INC.]~~

~~[By: \_\_\_\_\_~~  
~~Name: Scott Shaver]~~  
~~Title: Secretary]~~

~~[SOCOM LLC]~~

~~[By: \_\_\_\_\_~~  
~~Name: Marc Summey]~~  
~~Title: Manager]~~

[Signature Page to Second Amended and Restated Credit Agreement](#)

GAMESTOP CORP.  
GAMESTOP, INC.  
SUNRISE PUBLICATIONS, INC.  
ELBO INC.  
EB INTERNATIONAL HOLDINGS, INC.

By: \_\_\_\_\_

Name:

Title:

GAMESTOP TEXAS LTD.  
SIMPLY MAC, INC.  
SPRING COMMUNICATIONS  
HOLDING, INC.  
GS MOBILE, INC.  
GEEKNET, INC.

By: \_\_\_\_\_

Name:

Title:

MARKETING CONTROL SERVICES,  
INC.

By: \_\_\_\_\_

Name:

Title:

SOCOM LLC

By: \_\_\_\_\_

Name:

Title:

**BANK OF AMERICA, N.A.,**  
**as Agent, as Issuing Bank, and as Lender**

**By:**

**Name:** Andrew Cerussi

**Title:** Director

**Address:** 100 Federal Street, 9th Floor  
Boston, Massachusetts 02110

**Attn:** Mr. Andrew Cerussi

**Telephone:** (617) 434-9398

**Telecopy:** (617) 310-2686

Signature Page to Second Amended and Restated Credit Agreement

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as a Lender**

**By:**

**Name:**

**Title:**

Signature Page to Second Amended and Restated Credit Agreement

~~[BANK OF AMERICA, N.A.,  
as Agent, as Issuing Bank, and as Lender~~

By: \_\_\_\_\_]

~~[Name: Andrew Cerussi  
Title: Director~~

~~Address: 100 Federal Street, 9th Floor  
— Boston, Massachusetts 02110  
Attn: Mr. Stephen Garvin  
[Telephone: (617) 434-9399  
Telecopy: (617) 434-6685]~~

Signature Page to Second Amended and Restated Credit Agreement

**U.S. BANK NATIONAL ASSOCIATION,**  
**as a Lender**

**By:**

**Name:**

**Title:**

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Signature Page to Second Amended and Restated Credit Agreement

~~[WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Lender]~~

~~[By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_]~~

**REGIONS BANK, as a Lender**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

Signature Page to Second Amended and Restated Credit Agreement

~~[U.S. BANK NATIONAL ASSOCIATION, as a Lender]~~

[By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_]

[

Signature Page to Second Amended and Restated Credit Agreement

REGIONS BANK, as a Lender]

[By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_]  
[

Signature Page to Second Amended and Restated Credit Agreement

~~JPMORGAN CHASE BANK, N.A.~~ [as a Lender]

[By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_]

[

Signature Page to Second Amended and Restated Credit Agreement

~~HSBC BANK USA NA, as a Lender~~]

[By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_]  
[

Signature Page to Second Amended and Restated Credit Agreement

~~FIFTH THIRD BANK, as a Lender~~]

[By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_][2152298.2]

**JPMORGAN CHASE BANK, N.A., as a Lender**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

Signature Page to Second Amended and Restated Credit Agreement

**HSBC BANK USA, N.A., as a Lender**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

Signature Page to Second Amended and Restated Credit Agreement

**FIFTH THIRD BANK, as a Lender**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

Signature Page to Second Amended and Restated Credit Agreement

THIRD AMENDED AND RESTATED SECURITY AGREEMENT

THIRD AMENDED AND RESTATED SECURITY AGREEMENT (this "Agreement") dated as of November 20, 2017 among, GAMESTOP CORP., a corporation organized under the laws of the State of Delaware having a place of business at 625 Westport Parkway, Grapevine, Texas 76051, as Lead Borrower; GEEKNET, INC., a corporation organized under the laws of the State of Delaware having a place of business at 11216 Waples Mill Road Suite 100, Fairfax, Virginia 22030 (the "New Grantor"); the other Subsidiary Borrowers party hereto (together with the Lead Borrower, the "Existing Grantors" and each, individually, an "Existing Grantor"; and the Existing Grantors, together with New Grantor, the "Grantors" and each, individually, a "Grantor"); and BANK OF AMERICA, N.A., a national banking association, as administrative agent and collateral agent (in such capacities, the "Agent") for the Credit Parties, in consideration of the mutual covenants contained herein and benefits to be derived herefrom.

WITNESSETH:

WHEREAS, reference is made to (i) that certain Second Amended and Restated Credit Agreement, dated as of March 25, 2014 (the "Existing Credit Agreement") by, among others, the Lead Borrower, the other Borrowers party thereto, the Lenders named therein, the Agent, and Bank of America, N.A., as Issuing Bank, and (ii) that certain Second Amended and Restated Security Agreement, dated as of March 25, 2014 (as amended and in effect on and prior to the date hereof, the "Existing Security Agreement") by and among the Existing Grantors and Bank of America, N.A., as "Agent"; and

WHEREAS, contemporaneously herewith, the Grantors and the Agent, among others, are amending the Existing Credit Agreement pursuant to the Second Amendment to Second Amended and Restated Credit Agreement, dated as of even date herewith (the "Second Amendment") (the Existing Credit Agreement, as amended by that certain First Amendment to Second Amended and Restated Credit Agreement, dated as of September 15, 2014 and the Second Amendment, and as such may be further amended, modified, supplemented or restated hereafter, the "Credit Agreement") by and between, among others, (i) the Grantors, as Borrowers, (ii) the Lenders named therein, (iii) the Agent, and (iv) Bank of America, N.A., as Issuing Bank;

WHEREAS, New Grantor wishes to become a Borrower under the Credit Agreement and the other Loan Documents; and

WHEREAS, the obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit under the Credit Agreement, including to the New Grantor, are each conditioned upon, among other things, the execution and delivery by the Grantors of an agreement in the form hereof to secure the Secured Obligations (as defined herein).

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which

is hereby acknowledged, the undersigned hereby agree that the Existing Security Agreement shall be amended and restated in its entirety to read as follows (it being agreed that this Agreement shall not be deemed to evidence or result in a novation under the Existing Security Agreement):

## SECTION 1

### Definitions

1.1 Generally. Unless the context otherwise requires, all capitalized terms used but not defined herein shall have the meanings set forth in the Credit Agreement, and all references to the UCC shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the UCC differently than in another Article thereof, the term shall have the meaning set forth in Article 9, and provided further that if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of the Security Interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

1.2 Definition of Certain Terms Used Herein. As used herein, the following terms shall have the following meanings:

“Accessions” shall have the meaning given that term in the UCC.

“Account Debtor” shall have the meaning given that term in the UCC.

“Accounts” shall mean “accounts” as defined in the UCC, and also all accounts, accounts receivable, and rights to payment (whether or not earned by performance) for: (i) property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; (ii) services rendered or to be rendered; (iii) a policy of insurance issued or to be issued; (iv) a secondary obligation incurred or to be incurred; or (v) arising out of the use of a credit or charge card or information contained on or used with that card.

“Agent’s Rights and Remedies” shall have the meaning assigned to such term in Section 8.8.

“Blue Sky Laws” shall have the meaning assigned to such term in Section 6.1 of this Agreement.

“Certificated Security” shall have the meaning given that term in the UCC.

“Confirmer” shall have the meaning given that term in Section 5-102 of the UCC.

“Chattel Paper” shall have the meaning given that term in the UCC.

“Collateral” shall mean all personal and fixture property (other than fixture property pledged pursuant to a mortgage on any owned real property) of each Grantor, including, without limitation: (a) Accounts, (b) Chattel Paper (whether Tangible Chattel Paper or Electronic Chattel Paper), (c) Commercial Tort Claims, (d) Deposit Accounts, (e) Documents, (f) Equipment, (g) Fixtures, (h) General Intangibles (including Payment Intangibles), (i) Goods, (j) Instruments, (k) Inventory, (l) Investment Property, (m) Letter-of-Credit Rights, (n) Software, (o) Supporting Obligations, (p) all books, records, and information relating to any of the foregoing and/or to the operation of any Grantor’s business, and all rights of access to such books, records, and information, and all property in which such books, records, and information are stored, recorded and maintained, (q) all insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing ((a) through (p)) or otherwise, (r) all liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing ((a) through (q)), including the right of stoppage in transit, and (s) any of the foregoing whether now owned or now due, or in which any Grantor has an interest, or hereafter acquired, arising, or to become due, or in which any Grantor obtains an interest, and all products, Proceeds, substitutions, and Accessions of or to any of the foregoing. Notwithstanding anything to the contrary contained in this Agreement, the term “Collateral” shall not include any Excluded Property.

“Commercial Tort Claim” shall have the meaning given that term in the UCC.

“Commodity Intermediary” shall have the meaning given that term in the UCC.

“Credit Agreement” shall have the meaning assigned to such term in the preliminary statement of this Agreement.

“Deposit Account” shall have the meaning given that term in the UCC and shall also include all demand, time, savings, passbook, or similar accounts maintained with a bank.

“Documents” shall have the meaning given that term in the UCC.

“Electronic Chattel Paper” shall have the meaning given that term in the UCC.

“Entitlement Holder” shall have the meaning given that term in the UCC.

“Entitlement Order” shall have the meaning given that term in the UCC.

“Equipment” shall mean “equipment” as defined in the UCC, and also all furniture, store fixtures, rolling stock, machinery, office equipment, plant equipment, tools, dies, molds, and other goods, property, and assets which are used and/or were purchased for use in the operation or furtherance of a Grantors’ business, and any and all Accessions or additions thereto, and substitutions therefor, provided that Equipment shall not include motor vehicles.

“Excluded Property” shall mean the following:

(a) any General Intangibles (other than Payment Intangibles), leases, licenses, contracts, or agreements to which any Grantor is a party (1) that validly prohibits the creation by such Grantor of a security interest therein or thereon, unless consent has been obtained by any applicable third party required to provide such consent to the creation of such security interest or (2) to the extent that Applicable Law prohibits the creation of such a security interest therein or thereon;

(b) any real property;

(c) assets, with respect to which any Applicable Law prohibits the creation or perfection of security interests therein;

(d) any applications for any trademarks that have been filed with the United States Patent and Trademark Office on the basis of “intent-to-use” with respect to such marks, unless and until a statement of use or amendment to allege use is filed and accepted by the United States Patent and Trademark Office or any other filing is made or circumstances change so that the interests of a Borrower or Facility Guarantor in such marks is no longer on an “intent-to-use” basis, at which time such marks shall automatically and without further action by the parties be subject to the Security Interests and Liens granted by the Grantors to Agent hereunder;

(e) Excluded Accounts;

(f) any motor vehicles, vessels and aircraft, or other property subject to a certificate of title;

(g) Equity Interests in any joint venture with a third party that is not an Affiliate, to the extent a pledge of such Equity Interests is prohibited by the documents governing such joint venture;

(h) any of the outstanding Equity Interests of a Foreign Subsidiary in excess of 65% of the voting power of all classes of Equity Interests of such Foreign Subsidiary entitled to vote within the meaning of United States Treasury Regulation Section 1.956-2(c)(2); provided that for purposes of this clause (h), the term “Equity Interests” includes all interests in a Foreign Subsidiary treated as equity for U.S. federal income tax purposes; and

(i) any assets subject to a Lien described in Section 6.2(d), (e), and (g) of the Credit Agreement and proceeds thereof, to the extent that (and only for so long as) the documents governing the related Indebtedness prohibit other Liens on such assets, provided that such assets (i) shall automatically cease to be Excluded Property at such time as the documents governing such Indebtedness no longer prohibit other Liens on such assets and (ii) shall not be Excluded Property to the extent that the documents governing such Indebtedness permit the granting of a Lien for the benefit of the Credit Parties junior to the Lien pursuant to such documents;

provided that, in each case described in clauses (a), (c), and (d) above, such property shall constitute “Excluded Property” only to the extent and for so long as such General Intangible, contract, instrument, license, permit, lease or other document or Applicable Law validly prohibits the creation of a Lien on such property or asset in favor of the Agent and, upon termination of such prohibition (howsoever occurring), such property or asset shall cease to constitute “Excluded Property”; provided further that (x) the limitation set forth in clauses (a), (c), and (d) above shall not affect, limit, restrict or impair the grant by a Grantor of a Security Interest pursuant to this Security Agreement in any such Collateral to the extent that an otherwise applicable prohibition or restriction on such grant is rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other Applicable Law or principles of equity and (y) “Excluded Collateral” shall not include the right to receive any proceeds arising therefrom or any other rights referred to in Sections 9-406(f), 9-407(a), or 9-408(a) of the UCC or any Proceeds, substitutions or replacements of any Excluded Property (unless such Proceeds, substitutions or replacements would otherwise constitute Excluded Property).

“Financial Asset” shall have the meaning given that term in the UCC.

“Financing Statement” shall have the meaning given that term in the UCC.

“Fixture Filing” shall have the meaning given that term in the UCC.

“Fixtures” shall have the meaning given that term in the UCC.

“General Intangibles” shall have the meaning given that term in the UCC, and shall also include, without limitation, all: Payment Intangibles; rights to payment for credit extended; deposits; amounts due to any Grantor; credit memoranda in favor of any Grantor; warranty claims; tax refunds and abatements; insurance refunds and premium rebates; all means and vehicles of investment or hedging, including, without limitation, options, warrants, and futures contracts; records; customer lists; telephone numbers; goodwill; causes of action; judgments; payments under any settlement or other agreement; literary rights; rights to performance; royalties; license and/or franchise fees; rights of admission; licenses; franchises; license agreements, including all rights of any Grantor to enforce same; permits, certificates of convenience and necessity, and similar rights granted by any governmental authority; internet

addresses and domain names; developmental ideas and concepts; proprietary processes; blueprints, drawings, designs, diagrams, plans, reports, and charts; catalogs; technical data; computer software programs (including the source and object codes therefor), computer records, computer software, rights of access to computer record service bureaus, service bureau computer contracts, and computer data; tapes, disks, semi-conductors chips and printouts; user, technical reference, and other manuals and materials; patents, patent applications and patents pending; trade secret rights, copyrights, copyright applications, mask work rights and interests, and derivative works and interests; trade names, trademarks, trademark applications, service marks, and service mark applications, together with all goodwill connected with and symbolized by any of the foregoing; all other general intangible property of any Grantor in the nature of intellectual property; proposals; cost estimates, and reproductions on paper, or otherwise, of any and all concepts or ideas, and any matter related to, or connected with, the design, development, manufacture, sale, marketing, leasing, or use of any or all property produced, sold, or leased, by or credit extended or services performed, by any Grantor, whether intended for an individual customer or the general business of any Grantor, or used or useful in connection with research by any Grantor.

“Goods” shall have the meaning given that term in the UCC.

“Indemnitee” shall have the meaning assigned to such term in Section 8.6 of this Agreement.

“Instruments” shall have the meaning given that term in the UCC.

“Inventory” shall have the meaning given that term in the UCC, and shall also include, without limitation, all Goods which (a) are leased by a Person as lessor, (b) are held by a Person for sale or lease or to be furnished under a contract of service, (c) are furnished by a Person under a contract of service, or (d) consist of raw materials, work in process, or materials used or consumed in a business.

“Investment Property” shall have the meaning given that term in the UCC.

“IP Security Agreement” means the Second Amended and Restated Patent and Trademark Security Agreement dated as of the Effective Date and executed and delivered by the Grantors to the Agent for the ratable benefit of the Credit Parties, as the same may be amended, modified, supplemented or restated from time to time.

“Issuer” shall have the meaning given that term in the UCC.

“Letter-of-Credit Right” shall have the meaning given that term in the UCC and shall also mean any right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

“Payment Intangible” shall have the meaning given that term in the UCC, and shall also refer to any General Intangible under which the Account Debtor’s primary obligation is a monetary obligation.

“Perfection Certificate” shall mean a certificate substantially in the form of Annex 1 hereto, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by a Financial Officer of the Lead Borrower.

“Payment in Full” shall mean the occurrence of each of the following events: (i) the expiration or termination of the Commitments, (ii) the payment in full in cash of the principal of and interest on each Loan and all fees and other Secured Obligations, (iii) with respect to all Letters of Credit, (A) the expiration or termination and reduction to zero thereof, (B) the cash collateralization thereof to the extent required by the Credit Agreement, or (C) the supporting thereof by another letter of credit in a manner reasonably satisfactory to the Issuing Bank and the Agent, and (iv) the payment in full in cash of all Letter of Credit Outstandings. The term “Paid in Full” shall have a meaning correlative thereto.

“Proceeds” shall have the meaning given that term in the UCC.

“Secured Obligations” shall mean “Obligations” as defined in the Credit Agreement; provided, however, that Obligations described in clause (c) of the definition of Obligations shall be Secured Obligations solely to the extent that there is sufficient Collateral following satisfaction of the Obligations described in clauses (a) and (b) of the definition of Obligations.

“Securities Act” shall have the meaning assigned to such term in Section 6.1 of this Agreement.

“Securities Intermediary” shall have the meaning given that term in the UCC.

“Security” shall have the meaning given that term in the UCC.

“Security Interest” shall have the meaning assigned to such term in Section 2.1 of this Agreement.

“Software” shall have the meaning given that term in the UCC.

“Supporting Obligation” shall have the meaning given that term in the UCC and shall also refer to a Letter-of-Credit Right or secondary obligation that supports the payment or performance of an Account, Chattel Paper, a Document, a General Intangible, an Instrument, or Investment Property.

“Tangible Chattel Paper” shall have the meaning given that term in the UCC.

“Uncertificated Security” shall have the meaning given that term in the UCC.

1.3 Rules of Interpretation. The rules of interpretation specified in Sections 1.2 through 1.6 of the Credit Agreement shall be applicable to this Agreement.

## **SECTION 2**

### **Security Interest**

2.1 Security Interest. As security for the payment or performance, as the case may be, in full of the Secured Obligations when due, each Grantor hereby bargains, assigns, mortgages, pledges, hypothecates and transfers to the Agent, its successors and assigns, for the benefit of the Credit Parties, and hereby grants to the Agent, its successors and assigns, for the benefit of the Credit Parties, a Lien on and security interest in, all of such Grantor’s right, title and interest in, to and under the Collateral (the “Security Interest”). Without limiting the foregoing, each Grantor hereby designates the Agent as such Grantor’s true and lawful attorney, exercisable by the Agent whether or not an Event of Default exists, with full power of substitution, at the Agent’s option, to file one or more Financing Statements (including Fixture Filings), continuation statements, or to sign other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest granted by each Grantor, without the signature of any Grantor (each Grantor hereby appointing the Agent as such Person’s attorney to sign such Person’s name to any such instrument or document, whether or not an Event of Default exists), and naming any Grantor or the Grantors as debtors and the Agent as secured party. Each Grantor hereby ratifies its prior authorization for the Agent to file in any relevant jurisdiction any financing statements or amendments thereto relating to the Collateral if filed prior to the date hereof (including, without limitation, any such financing statements or amendments identifying “Bank of America, N.A., as Collateral Agent” as secured party). The Agent acknowledges that the attachment of its Security Interest in any Commercial Tort Claim is subject to the Grantors’ compliance with Section 4.12.

2.2 No Assumption of Liability. The Security Interest is granted as security only and shall not subject the Agent or any other Credit Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Collateral. Except during the existence of an Event of Default, the Grantors shall retain the right to vote any of the Investment Property constituting Collateral in a manner not inconsistent with the terms of this Agreement and the Credit Agreement.

## SECTION 3

### Representations and Warranties

The Grantors jointly and severally represent and warrant to the Agent and the other Credit Parties that:

3.1 Representations and Warranties Incorporated by Reference. Each Grantor hereby restates each of the representations and warranties set forth in Article 3 of the Credit Agreement with respect to such Grantor as a Borrower thereunder. Each such warranty and representation is incorporated herein by reference.

3.2 Title and Authority. Each Grantor has good and valid rights in, or title to, the Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Agent the Security Interest in such Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval which has been obtained.

3.3 Filings. The Perfection Certificate has been duly prepared, completed and executed, and the information set forth therein is correct and complete in all material respects. UCC Financing Statements (including Fixture Filings, as applicable) or other appropriate filings, recordings or registrations containing a description of the Collateral have been filed in each governmental, municipal or other office as is necessary to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Agent (for the benefit of the Credit Parties) in respect of all Collateral in which the Security Interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, re-filing, recording, rerecording, registration or re-registration is necessary in any such jurisdiction, except as provided under Applicable Law with respect to the filing of continuation statements or as a result of any change in a Grantor's name or jurisdiction of incorporation or formation or under any other circumstances under which, pursuant to the UCC, filings previously made have become misleading or ineffective in whole or in part.

3.4 Validity and Priority of Security Interest. The Security Interest constitutes (a) a legal and valid security interest in all of the Collateral securing the payment and performance of the Obligations, and (b) subject to the filings described in Section 3.3 above, a perfected security interest in all of the Collateral. The Security Interest is and shall be prior to any other Lien on any of the Collateral, subject only to those Liens expressly permitted pursuant to Section 6.2 of the Credit Agreement and having priority over the Security Interest by operation of Applicable Law.

3.5 Absence of Other Liens. The Collateral is owned by the Grantors free and clear of any Lien, except for Liens expressly permitted pursuant to Section 6.2 of the Credit Agreement. Except as provided in the Loan Documents, the Grantors have not filed or consented to the filing of (a) any Financing Statement or analogous document under the UCC or any other Applicable Law covering any Collateral, (b) any assignment in which any Grantor assigns any Collateral or any security agreement or similar instrument covering any Collateral with the United States Patent and Trademark Office or the United States Copyright Office or (c) any assignment in which any Grantor assigns any Collateral or any security agreement or similar instrument covering any Collateral with any foreign governmental, municipal or other office, which Financing Statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Liens expressly permitted pursuant to Section 6.2 of the Credit Agreement.

3.6 Bailees, Warehousemen, Etc. Except as otherwise disclosed in the Perfection Certificate, no Inventory costing in excess of \$5,000,000 held on a temporary basis of any Grantor is in the care or custody of any one third party or stored or entrusted with any one bailee or other third party and none shall hereafter be placed under such care, custody, storage or entrustment unless a waiver or other agreement reasonably satisfactory to the Agent is delivered to the Agent by such third party or bailee.

3.7 Consignments. Except as otherwise disclosed in the Perfection Certificate, no Grantor has, and none shall have, possession of any property on consignment.

## **SECTION 4**

### **Covenants**

4.1 Covenants Incorporated by Reference. Each Grantor hereby covenants and agrees that each Grantor shall perform, observe and otherwise comply with the covenants set forth in Articles 5 and 6 of the Credit Agreement with respect to such Grantor as a Borrower.

4.2 Change of Name; Location of Collateral; Records; Place of Business.

(a) Each Grantor agrees to furnish to the Agent thirty (30) days' prior written notice of (i) any change in its legal name, (ii) any change in the location of its chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it, or any office or facility at which Collateral owned by it is located, including the establishment of any such new office or facility, (iii) any change in its identity or organizational structure, (iv) any change in its Federal Taxpayer Identification Number or organizational number, if any, assigned to it by its state of organization, or (v) the acquisition by any Grantor of any property for which additional filings or recordings are necessary to perfect and maintain the Agent's Security

Interest therein. Each Grantor agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all of the Collateral.

(b) Each Grantor agrees to maintain, at its own cost and expense, such complete and accurate records with respect to the Collateral owned by it as is consistent with its current practices and in accordance with such prudent and standard practices used in industries that are the same as, or similar to, those in which such Grantor is engaged, and, at such time or times as the Agent may reasonably request, promptly to prepare and deliver to the Agent a duly certified schedule or schedules in form and detail reasonably satisfactory to the Agent showing the identity, amount and location of any and all Collateral.

4.3 Protection of Security. Each Grantor shall, at its own cost and expense, take any and all actions reasonably necessary to defend title to the Collateral against all Persons and to defend the Security Interest of the Agent in the Collateral and the priority thereof against any Lien not expressly permitted pursuant to Section 6.2 of the Credit Agreement.

4.4 Further Assurances. Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Agent may from time to time reasonably request to better assure, preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any Financing Statements (including Fixture Filings) or other documents in connection herewith or therewith. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any promissory note or other instrument, such note or instrument shall be promptly pledged and delivered to the Agent, duly endorsed in a manner satisfactory to the Agent.

4.5 Inspection and Verification. Without limiting the terms and conditions of Sections 5.9 of the Credit Agreement, the Agent and such Persons as the Agent may reasonably designate shall have the right, at the Grantors' own cost and expense, on reasonable prior notice except if an Event of Default then exists, to inspect the Collateral, all records related thereto (and to make extracts and copies from such records) and the premises upon which any of the Collateral is located, to discuss the Grantors' affairs with the officers of the Grantors and their independent accountants and to verify the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Collateral, including, in the case of Accounts or Collateral in the possession of any third Person, by contacting Account Debtors or the third Person possessing such Collateral for the purpose of making such a verification, provided that prior to the occurrence and continuation of an Event of Default, the Grantors shall only be

required to pay the fees and expenses for (i) one commercial finance examination and one appraisal during each twelve month period following the Second Amendment Effective Date so long as the condition set forth in clause (ii) below does not apply and (ii) two commercial finance examinations and two appraisals during each twelve month period following the Second Amendment Effective Date if Excess Availability is at any time less than twenty percent (20%) of the Loan Cap. The Agent shall have the absolute right to share any information it gains from such inspection or verification with any Credit Party. Notwithstanding the foregoing limitations on the Grantors' obligation to pay the expenses for appraisals and commercial finance examinations prior to the occurrence of an Event of Default, the Agent may, (i) undertake such additional appraisals and commercial finance examinations prior to the occurrence of an Event of Default as it, in its Permitted Discretion, deems necessary, at the expense of the Lenders, and (ii) if an Event of Default shall have occurred and be continuing, undertake such additional appraisals and commercial finance examinations at the Grantors' expense as it deems appropriate.

4.6 Taxes; Encumbrances. At its option, the Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Collateral and not permitted pursuant to Section 6.2 of the Credit Agreement, and may take any other action which the Agent may deem necessary or desirable to repair, maintain or preserve any of the Collateral to the extent any Grantor fails to do so as required by the Credit Agreement or this Agreement, and each Grantor jointly and severally agrees to reimburse the Agent on demand for any payment made or any expense incurred by the Agent pursuant to the foregoing authorization; provided, however, that the Agent shall not have any obligation to undertake any of the foregoing and shall have no liability on account of any action so undertaken except where there is a specific finding in a judicial proceeding (in which the Agent has had an opportunity to be heard), from which finding no further appeal is available, that the Agent had acted in actual bad faith or in a grossly negligent manner; and provided further that the making of any such payments by the Agent shall not be deemed to constitute a waiver of any Default or Event of Default arising from the Grantors' failure to have made such payments. Nothing in this Section 4.6 shall be interpreted as excusing any Grantor from the performance of any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.

4.7 Assignment of Security Interest.

(a) If at any time any Grantor shall take a security interest in any property of an Account Debtor or any other Person to secure payment and performance of an Account, such Grantor shall promptly assign such security interest to the Agent. Such assignment need not be filed of public record unless necessary to continue the perfected

status of the security interest against creditors of, and transferees from, the Account Debtor or other Person granting the security interest.

(b) To the extent that any Grantor is a beneficiary under any written letter of credit now or hereafter issued in favor of such Grantor (which, for the avoidance of doubt, shall not include any Letter of Credit issued pursuant to the Credit Agreement), such Grantor shall deliver such letter of credit to the Agent. The Agent shall from time to time, at the request and expense of such Grantor, make such arrangements with such Grantor as are in the Agent's reasonable judgment necessary and appropriate so that such Grantor may make any drawing to which such Grantor is entitled under such letter of credit, without impairment of the Agent's perfected security interest in such Grantor's rights to proceeds of such letter of credit or in the actual proceeds of such drawing. At the Agent's request, such Grantor shall, for any letter of credit, whether or not written, now or hereafter issued in favor of such Grantor as beneficiary, execute and deliver to the issuer and any Confirmer of such letter of credit an assignment of proceeds form, in favor of the Agent and satisfactory to the Agent and such issuer or (as the case may be) such Confirmer, requiring the proceeds of any drawing under such letter of credit to be paid directly to the Agent.

4.8 Continuing Obligations of the Grantors. Each Grantor shall remain liable to observe and perform all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Collateral, all in accordance with the terms and conditions thereof, and each Grantor jointly and severally agrees to indemnify and hold harmless the Agent and the other Credit Parties from and against any and all liability for such performance.

4.9 Use and Disposition of Collateral. None of the Grantors shall make or permit to be made an assignment, pledge or hypothecation of the Collateral or shall grant any other Lien in respect of the Collateral, except as expressly permitted by Section 6.2 of the Credit Agreement. Except as expressly permitted in the Credit Agreement, none of the Grantors shall make or permit to be made any transfer of the Collateral, and each Grantor shall remain at all times in possession of the Collateral owned by it, except that (a) Inventory may be sold in the ordinary course of business, (b) a Grantor may transfer Collateral to any other Grantor, and (c) unless and until the Agent shall notify the Grantors that an Event of Default shall have occurred and be continuing and that the Grantors shall not sell, convey, lease, assign, transfer or otherwise dispose of any Collateral (which notice may be given by telephone if promptly confirmed in writing), the Grantors may use and dispose of the Collateral in any lawful manner not inconsistent with the provisions of this Agreement, the Credit Agreement or any other Loan Document.

4.10 Limitation on Modification of Accounts. None of the Grantors will, without the Agent's prior written consent, grant any extension of the time of payment of any of the Accounts, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof or allow any credit or discount whatsoever thereon, other than extensions, releases, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with its current practices.

4.11 Insurance.

(a) The Grantors shall maintain insurance on the Collateral as required by Section 5.7 of the Credit Agreement. All such insurance which covers the Collateral shall include an endorsement in favor of the Agent, which endorsement shall provide that the insurance, to the extent of the Agent's interest therein, shall not be impaired or invalidated, in whole or in part, by reason of any act or neglect of any Grantor or by the failure of any Grantor to comply with any warranty or condition of the policy.

(b) Each Grantor hereby irrevocably makes, constitutes and appoints the Agent (and all officers, employees or agents designated by the Agent) as such Grantor's true and lawful agent (and attorney-in-fact), for the purpose of making, settling and adjusting claims in respect of Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto. In the event that any Grantor at any time or times shall fail to obtain or maintain any of the policies of insurance required hereby or to pay any premium in whole or part relating thereto, the Agent may, without waiving or releasing any obligation or liability of the Grantors hereunder or any Default or Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Agent deems advisable. All sums disbursed by the Agent in connection with this Section 4.11, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Agent and shall be additional Secured Obligations secured hereby and by the other Security Documents.

4.12 Commercial Tort Claims. If any Grantor shall at any time acquire a Commercial Tort Claim in excess of \$2,500,000, such Grantor shall promptly notify the Agent in writing of the details thereof and the Grantors shall take such actions as the Agent shall reasonably request in order to grant to the Agent, for the ratable benefit of the Credit Parties, a perfected and first priority security interest therein and in the Proceeds thereof.

4.13 Legend. At the request of the Agent, each Grantor shall legend, in form and manner reasonably satisfactory to the Agent, its Accounts and its books, records and documents

evidencing or pertaining thereto with an appropriate reference to the fact that such Accounts have been assigned to the Agent for the benefit of the Credit Parties and that the Agent has a security interest therein.

4.14 General Intangibles. Each Grantor shall apply for, and diligently pursue applications for, registration of its ownership of the General Intangibles constituting Collateral for which registration is appropriate, and which are material to its business, and will use such other reasonable measures as are appropriate to preserve its rights in its other General Intangibles constituting Collateral, except that such Grantor may abandon such rights as could not reasonably be expected to have a Material Adverse Effect on the value of such General Intangibles. Each Grantor will, at the request of the Agent, retain current copies of all materials created by or furnished to such Grantor on which is recorded then current information relating to any computer programs or data bases that such Grantor has developed or otherwise has the right to use from time to time. Such materials shall include, without limitation, magnetic or other computer media on which object, source or other code is recorded and documentation of those computer programs or data bases, in the nature of listing printouts, narrative descriptions, flow diagrams and similar items. Each Grantor will, at the reasonable request of the Agent, deliver a set of such copies to the Agent for safekeeping and retention or transfer in the event of the exercise of the Agent's Rights and Remedies.

4.15 Investment Property.

(a) If any Grantor shall at any time hold or acquire any Certificated Securities (other than treasury stock of such Grantor), such Grantor shall forthwith endorse, assign and deliver the same to the Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Agent may from time to time specify, all of which thereafter shall be held by the Agent, pursuant to the terms of this Agreement, as part of the Collateral. If any Securities now held or hereafter acquired by any Grantor are Uncertificated Securities (other than treasury stock of such Grantor) and are issued to such Grantor or its nominee directly by the Issuer thereof, such Grantor shall promptly notify the Agent thereof and, at the Agent's request and option, pursuant to an agreement in form and substance reasonably satisfactory to the Agent, either (i) cause the Issuer to agree to comply with instructions from the Agent as to such Securities, without further consent of such Grantor or the nominee, or (ii) arrange for the Agent to become the registered owner of the Securities. If any Grantor, as registered holder of Investment Property, receives any stock certificate, option or right, or other distribution, whether as an addition to, in substitution of, or in exchange for, such Investment Property, or otherwise, such Grantor agrees to accept the same in trust for the Agent and the other Credit Parties and to forthwith endorse, assign and deliver the same to the Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Agent may from time to time specify, to be held by the Agent as Collateral. If any

Securities, whether Certificated Securities or Uncertificated Securities, or other Investment Property now held or hereafter acquired by any Grantor are held by such Grantor or its nominee through a Securities Intermediary or Commodity Intermediary, such Grantor shall promptly notify the Agent thereof and, at the Agent's request and option, pursuant to an agreement in form and substance reasonably satisfactory to the Agent, either (i) cause such Securities Intermediary or Commodity Intermediary, as the case may be, to agree to comply with Entitlement Orders or other instructions from the Agent to such Securities Intermediary as to such Securities or other Investment Property or, as the case may be, to apply any value distributed on account of any commodity contract as directed by the Agent to such Commodity Intermediary, in each case without the further consent of such Grantor or such nominee, or (ii) in the case of Financial Assets or other Investment Property held through a Securities Intermediary, arrange for the Agent to become the Entitlement Holder with respect to such Investment Property.

(b) The Agent agrees with each Grantor that, pursuant to this Section 4.15, the Agent shall not give any such Entitlement Orders or instructions or directions to any such Issuer, Securities Intermediary or Commodity Intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by such Grantor, provided that no Cash Dominion Event has occurred and is continuing or, after giving effect thereto, any such investment or withdrawal rights not otherwise permitted by the Credit Agreement would occur. In addition, (i) so long as no Event of Default shall have occurred and be continuing, each Grantor shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Securities for all purposes not inconsistent with the terms of this Agreement, the Credit Agreement or any other instrument or agreement referred to herein or therein; and the Agent shall execute and deliver or cause to be executed and delivered to such Grantor all such proxies, powers of attorney, dividend and other orders, and all such instruments, without recourse, as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the rights and powers which it is entitled to exercise pursuant hereto, and (ii) so long as no Cash Dominion Event shall have occurred and be continuing, each Grantor shall be entitled to receive and retain any dividends or other distributions on the Securities.

4.16 Electronic Chattel Paper and Transferable Records. If any Grantor at any time holds or acquires an interest in excess of \$2,500,000 in any Electronic Chattel Paper or any "transferable record" as such term is defined in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001, et. seq., or in Section 16 of the Uniform Electronic Transactions Act as in effect in any jurisdiction applicable to such Grantor, such Grantor shall promptly notify the Agent thereof and, at the request of the Agent, shall take such action as the Agent may reasonably request to vest in the Agent control under the UCC, the Electronic Signatures in Global and National Commerce Act, or the Uniform Electronic Transactions Act, as the case may be, of such transferable record. The Agent agrees with each Grantor that so long

as no Event of Default has occurred and is continuing or would occur after taking into account the following, the Agent will arrange, pursuant to procedures satisfactory to the Agent and so long as such procedures will not result in Agent's loss of control under the UCC, the Electronic Signatures in Global and National Commerce Act, or the Uniform Electronic Transactions Act, as the case may be, for such Grantor to make such necessary alterations to the Electronic Chattel Paper or transferable record as are permitted under the UCC, the Electronic Signatures in Global and National Commerce Act, or the Uniform Electronic Transactions Act, as the case may be.

4.17 Tangible Chattel Paper, Notes and Other Instruments. If at any time any amount payable to any Grantor under or in connection with any of the Collateral is evidenced by any Tangible Chattel Paper, promissory note, trade acceptances or other Instrument, such Grantor shall promptly deliver the same to the Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Agent may from time to time reasonably request.

4.18 Bailments, Etc. If any Collateral costing in excess of \$5,000,000 is at any time in the possession or control of any one warehouseman for more than a temporary period of time (not to exceed five (5) Business Days), bailee or any Grantor's agents, such Grantor shall promptly notify the Agent thereof and, upon the request of the Agent, (i) notify such warehouseman, bailee or agent to hold all such Collateral for the Agent's account subject to the Agent's instructions, (ii) obtain from such warehouseman, bailee or agent a Collateral Access Agreement, (iii) deliver any negotiable warehouse receipt, bill of lading or other document of title issued with regard to the Collateral to the Agent appropriately endorsed to the Agent's order, and/or (iv) arrange for the issuance in the name of the Agent, in form reasonably satisfactory to the Agent, any nonnegotiable document of title covering such Collateral. The Agent agrees with each Grantor that the Agent shall not give any such instructions unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Grantor with respect to such warehouseman, bailee or agent.

4.19 Other Perfection, Etc. The Grantors shall at any time and from time to time take such steps as the Agent may reasonably request for the Agent (a) to obtain "control" of any Deposit Accounts or Letter-of-Credit Rights, with any agreements establishing control to be in form and substance satisfactory to the Agent, and (b) otherwise to insure the continued perfection of the Agent's security interest in any of the Collateral with the priority described in Section 3.4 and of the preservation of its rights therein. The Agent agrees with each Grantor that the Agent shall not give notice to any depository under any control, blocked account or similar agreement in respect of a Deposit Account unless a Cash Dominion Event has occurred and is continuing.

4.20 Assignment of Claims Act. If at any time any Accounts of any Grantor arise from contracts with the United States of America or any department, agency or instrumentality thereof, such Grantor will promptly notify the Agent thereof and shall execute all assignments

and take all steps reasonably requested by the Agent in order that all monies due and to become due thereunder will be assigned and paid to the Agent and notice thereof given to the federal authorities under the Assignment of Claims Act of 1940, 41 U.S.C. §15.

4.21 Notices and Reports Pertaining to Collateral. In addition to any other notice or reporting requirement imposed on the Grantors under this Agreement or the Credit Agreement, the Grantors will, with respect to the Collateral:

- (a) Promptly notify the Agent when any Grantor obtains knowledge of actual or imminent bankruptcy or other insolvency proceeding of any material Account Debtor or Issuer of Investment Property;
- (b) Promptly notify the Agent of any material return or adjustment, rejection, repossession, or loss or damage of or to merchandise represented by Accounts or constituting Inventory and of any material credit, adjustment or dispute arising in connection with the goods or services represented by Accounts or constituting Inventory;
- (c) Promptly after the application by any Grantor for registration of any General Intangibles, notify the Agent thereof; and
- (d) Promptly notify the Agent in the event of a material loss or damage to the Collateral, if such loss or damage is not covered by insurance, of any reclamation or repossession of or any action by a creditor to reclaim or repossess any material asset(s) of any Grantor, of any material adverse change in the Collateral, and of any other occurrence that may have a Material Adverse Effect on the Security Interest of the Agent in the Collateral.

## SECTION 5

### Collections

#### 5.1 Collections.

(a) Each Grantor shall at all times comply with the Cash Receipts provisions of Section 2.21 of the Credit Agreement including, without limitation, after the occurrence and during the continuance of a Cash Dominion Event, causing the sweep on each Business Day of all Cash Receipts into the Bank of America Concentration Account or a Blocked Account, as provided for in the Credit Agreement.

(b) Without the prior written consent of the Agent, no Grantor shall modify or amend the instructions pursuant to any of the DDA Notifications, the Credit Card Notifications, or the Blocked Account Agreements. So long as no Event of Default has

occurred and is continuing, each Grantor shall, and the Agent hereby authorizes each Grantor to, enforce and collect all amounts owing on the Inventory and Accounts, for the benefit and on behalf of the Agent and the other Credit Parties; provided, however, that such privilege may, at the option of the Agent, be terminated upon the occurrence and during the continuance of any Event of Default.

5.2 Power of Attorney. Each Grantor irrevocably makes, constitutes and appoints the Agent (and all officers, employees or agents designated by the Agent) as such Grantor's true and lawful agent and attorney-in-fact, and in such capacity the Agent shall have the right, with power of substitution for each Grantor and in each Grantor's name or otherwise, for the use and benefit of the Agent and the other Credit Parties, (a) at any time, whether or not a Default or Event of Default has occurred, to take actions required to be taken by the Grantors under Section 2.1 of this Agreement, (b) upon the occurrence and during the continuance of a Cash Dominion Event or as otherwise permitted under the Credit Agreement, (i) to take actions required to be taken by the Grantors under Section 5.1 of this Agreement, and (ii) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; and (c) upon the occurrence and during the continuance of an Event of Default or as otherwise permitted under the Credit Agreement, (i) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral; (ii) to sign the name of any Grantor on any invoices, schedules of Collateral, freight or express receipts, or bills of lading storage receipts, warehouse receipts or other documents of title relating to any of the Collateral; (iii) to sign the name of any Grantor on any notice to such Grantor's Account Debtors; (iv) to sign the name of any Grantor on any proof of claim in bankruptcy against Account Debtors, and on notices of lien, claims of mechanic's liens, or assignments or releases of mechanic's liens securing the Accounts; (v) to sign change of address forms to change the address to which each Grantor's mail is to be sent to such address as the Agent shall designate; (vi) to receive and open each Grantor's mail, remove any Proceeds of Collateral therefrom and turn over the balance of such mail either to the Lead Borrower or to any trustee in bankruptcy or receiver of a Grantor, or other legal representative of a Grantor whom the Agent determines to be the appropriate person to whom to so turn over such mail; (vii) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral; (viii) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; (ix) to take all such action as may be necessary to obtain the payment of any letter of credit and/or banker's acceptance of which any Grantor is a beneficiary; (x) to repair, manufacture, assemble, complete, package, deliver, alter or supply goods, if any, necessary to fulfill in whole or in part the purchase order of any customer of any Grantor; (xi) to use, license or transfer any or all General Intangibles of any Grantor; and (xii) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though

the Agent were the absolute owner of the Collateral for all purposes; provided, however, that nothing herein contained shall be construed as requiring or obligating the Agent or any other Credit Party to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Agent or any other Credit Party, or to present or file any claim or notice. It is understood and agreed that the appointment of the Agent as the agent and attorney-in-fact of the Grantors for the purposes set forth above is coupled with an interest and is irrevocable.

5.3 No Obligation to Act. The Agent shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 5.2, but if the Agent elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to any Grantor for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Agent has had an opportunity to be heard) in a court of competent jurisdiction which determination includes a specific finding that the subject act or omission to act had been grossly negligent, willful misconduct or in actual bad faith. The provisions of Section 5.2 shall in no event relieve any Grantor of any of its obligations hereunder or under any other Loan Document with respect to the Collateral or any part thereof or impose any obligation on the Agent or any other Credit Party to proceed in any particular manner with respect to the Collateral or any part thereof, or in any way limit the exercise by the Agent or any other Credit Party of any other or further right which it may have on the date of this Agreement or hereafter, whether hereunder, under any other Loan Document, by law or otherwise.

## SECTION 6

### Remedies

6.1 Remedies upon Default. Upon the occurrence of an Event of Default, it is agreed that the Agent shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC or other Applicable Law. The rights and remedies of the Agent shall include, without limitation, the right to take any of or all the following actions at the same or different times:

(a) With respect to any Collateral consisting of Accounts, General Intangibles (including Payment Intangibles), Letter-of-Credit Rights, Instruments, Chattel Paper, Documents, and Investment Property, the Agent may collect the Collateral with or without the taking of possession of any of the Collateral.

(b) With respect to any Collateral consisting of Accounts, the Agent may (i) demand, collect and receive any amounts relating thereto, as the Agent may determine; (ii) commence and prosecute any actions in any court for the purposes of collecting any

such Accounts and enforcing any other rights in respect thereof; (iii) defend, settle or compromise any action brought and, in connection therewith, give such discharges or releases as the Agent may reasonably deem appropriate; (iv) without limiting the Agent's rights set forth in Section 5.2 hereof, receive, open and dispose of mail addressed to any Grantor and endorse checks, notes, drafts, acceptances, money orders, bills of lading, warehouse receipts or other instruments or documents evidencing payment, shipment or storage of the goods giving rise to such Accounts or securing or relating to such Accounts, on behalf of and in the name of such Grantor; and (v) sell, assign, transfer, make any agreement in respect of, or otherwise deal with or exercise rights in respect of, any such Accounts or the goods or services which have given rise thereto, as fully and completely as though the Agent were the absolute owner thereof for all purposes.

(c) With respect to any Collateral consisting of Investment Property, the Agent may (i) exercise all rights of any Grantor with respect thereto, including without limitation, the right to exercise all voting and corporate rights at any meeting of the shareholders of the Issuer of any Investment Property and to exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any Investment Property as if the Agent was the absolute owner thereof, including the right to exchange, at its discretion, any and all of any Investment Property upon the merger, consolidation, reorganization, recapitalization or other readjustment of the Issuer thereof, all without liability except to account for property actually received as provided in Section 5.3 hereof; (ii) transfer such Collateral at any time to itself, or to its nominee, and receive the income thereon and hold the same as Collateral hereunder or apply it to the Obligations; and (iii) demand, sue for, collect or make any compromise or settlement it deems desirable. The Grantors recognize that (a) the Agent may be unable to effect a public sale of all or a part of the Investment Property by reason of certain prohibitions contained in the Securities Exchange Act of 1934 (as amended and in effect, the "Securities Act") and/or the applicable regulations promulgated by the Securities and Exchange Commission pursuant to the Securities Act or the Securities laws of various states (the "Blue Sky Laws"), but may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire the Investment Property for their own account, for investment and not with a view to the distribution or resale thereof, (b) private sales so made may be at prices and upon other terms less favorable to the seller than if the Investment Property were sold at public sales, (c) neither the Agent nor any other Credit Party has any obligation to delay sale of any of the Investment Property for the period of time necessary to permit the Investment Property to be registered for public sale under the Securities Act or the Blue Sky Laws, and (d) private sales made under the foregoing circumstances shall be deemed to have been made in a commercially reasonable manner.

(d) With respect to any Collateral consisting of Inventory, Goods, and Equipment, the Agent may conduct one or more going out of business sales, in the Agent's own right or by one or more agents and contractors. Such sale(s) may be conducted upon any premises owned, leased, or occupied by any Grantor. The Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory with other goods (all of which other goods shall remain the sole property of the Agent or such agent or contractor). Any amounts realized from the sale of such goods which constitute augmentations to the Inventory (net of an allocable share of the costs and expenses incurred in their disposition) shall be the sole property of the Agent or such agent or contractor and neither any Grantor nor any Person claiming under or in right of any Grantor shall have any interest therein. Each purchaser at any such going out of business sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor.

(e) With respect to any Collateral consisting of General Intangibles, the Agent may exercise all of the rights granted to the Agent under the IP Security Agreement.

(f) With or without legal process and with or without prior notice or demand for performance, the Agent may enter upon, occupy, and use any premises owned or occupied by each Grantor, and may exclude the Grantors from such premises or portion thereof as may have been so entered upon, occupied, or used by the Agent to the extent the Agent deems such exclusion reasonably necessary to preserve and protect the Collateral. The Agent shall not be required to remove any of the Collateral from any such premises upon the Agent's taking possession thereof, and may render any Collateral unusable to the Grantors. In no event shall the Agent be liable to any Grantor for use or occupancy by the Agent of any premises pursuant to this Section 6.1, nor for any charge (such as wages for the Grantors' employees and utilities) incurred in connection with the Agent's exercise of the Agent's Rights and Remedies (as defined herein) hereunder.

(g) The Agent may require any Grantor to assemble the Collateral and make it available to the Agent at the Grantor's sole risk and expense at a place or places which are reasonably convenient to both the Agent and such Grantor.

(h) Each Grantor agrees that the Agent shall have the right, subject to Applicable Law, to sell or otherwise dispose of all or any part of the Collateral, at public or private sale, for cash, upon credit or for future delivery as the Agent shall deem appropriate. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor.

(i) Unless the Collateral is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market (in which event the Agent shall provide the Grantors such notice as may be practicable under the circumstances),

the Agent shall give the Grantors at least ten (10) days' prior written notice, by authenticated record, of the date, time and place of any proposed public sale, and of the date after which any private sale or other disposition of the Collateral may be made. Each Grantor agrees that such written notice shall satisfy all requirements for notice to that Grantor which are imposed under the UCC or other Applicable Law with respect to the exercise of the Agent's rights and remedies upon default. The Agent shall not be obligated to make any sale or other disposition of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale or other disposition of such Collateral shall have been given. The Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned.

(j) Any public sale shall be held at such time or times within ordinary business hours and at such place or places as the Agent may fix and state in the notice of such sale. At any sale or other disposition, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Agent may (in its sole and absolute discretion) determine. If any of the Collateral is sold, leased, or otherwise disposed of by the Agent on credit, the Obligations shall not be deemed to have been reduced as a result thereof unless and until payment is finally received thereon by the Agent.

(k) At any public (or, to the extent permitted by Applicable Law, private) sale made pursuant to this Section 6.1, the Agent or any other Credit Party may bid for or purchase, free (to the extent permitted by Applicable Law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor, the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to the Agent or such other Credit Party from any Grantor on account of the Secured Obligations as a credit against the purchase price, and the Agent or such other Credit Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor.

(l) For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof. The Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Agent shall have entered into such an agreement all Events of Default shall have been remedied and all Secured Obligations shall have been Paid in Full.

(m) As an alternative to exercising the power of sale herein conferred upon it, the Agent may proceed by a suit or suits at law or in equity to foreclose upon the

Collateral and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver.

(n) To the extent permitted by Applicable Law, each Grantor hereby waives all rights of redemption, stay, valuation and appraisal which such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

6.2 Application of Proceeds. After the occurrence of an Event of Default and acceleration of the Secured Obligations pursuant to Section 7.1 of the Credit Agreement, the Agent shall apply the proceeds of any collection or sale of the Collateral, as well as any Collateral consisting of cash, or any Collateral granted under any other of the Security Documents, in the manner set forth in Section 7.3 of the Credit Agreement.

## **SECTION 7**

### **Perfection of Security Interest**

7.1 Perfection by Filing. This Agreement constitutes an authenticated record, and each Grantor hereby authorizes the Agent, pursuant to the provisions of Sections 2.1 and 5.2, to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral, in such filing offices as the Agent shall reasonably deem appropriate, and the Grantors shall pay the Agent's reasonable costs and expenses incurred in connection therewith. Each Grantor hereby further agrees that a carbon, photographic, or other reproduction of this Agreement shall be sufficient as a Financing Statement and may be filed as a Financing Statement in any and all jurisdictions.

7.2 Savings Clause. Nothing contained in this Article VII shall be construed to narrow the scope of the Agent's Security Interest in any of the Collateral or the perfection or priority thereof or to impair or otherwise limit any of the Agent's Rights and Remedies hereunder except (and then only to the extent) as mandated by the UCC.

## **SECTION 8**

### **Miscellaneous**

8.1 Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 9.1 of the Credit Agreement.

8.2 Grant of Non-Exclusive License. Without limiting the rights of the Agent under the IP Security Agreement, each Grantor hereby grants to the Agent a royalty free, non-exclusive, irrevocable license, which license shall be exercisable upon the existence and during the continuance of an Event of Default, to use, apply, and affix any trademark, trade name, logo, or the like in which any Grantor now or hereafter has rights, such license being with respect to the Agent's exercise of the Agent's Rights and Remedies hereunder including, without limitation, in connection with any completion of the manufacture of Inventory or any sale or other disposition of Inventory.

8.3 Security Interest Absolute. All rights of the Agent hereunder, the Security Interest and all obligations of the Grantors hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document, or any other agreement or instrument, (c) any pledge, exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from the Guaranty or any other guarantee, securing or guaranteeing all or any of the Secured Obligations, (d) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Grantor, (e) any exercise, non-exercise or waiver of any right, remedy, power or privilege under or in respect hereof, of the Credit Agreement or of any other Loan Document except as specifically set forth in a waiver granted pursuant to the provisions of Section 8.8(b) hereof, or (f) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement.

8.4 Survival of Agreement. All covenants, agreements, representations and warranties made by the Grantors herein and in any other Loan Document and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Agent and the other Credit Parties and shall survive the execution and delivery of this Agreement and the other Loan Documents and the making of any Loans and the issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended under the Loan Agreement, and shall continue in full force and effect until Payment in Full of the Secured Obligations.

8.5 Binding Effect; Several Agreement; Assignments. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the

Grantors that are contained in this Agreement shall bind and inure to the benefit of each Grantor and its respective successors and assigns. This Agreement shall be binding upon each Grantor and the Agent and their respective successors and assigns, and shall inure to the benefit of each Grantor, the Agent and the other Credit Parties and their respective successors and assigns, except that no Grantor shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such attempted assignment or transfer shall be void) except as expressly permitted by this Agreement or the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to each Grantor and may be amended, modified, supplemented, waived or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

#### 8.6 Agent's Fees and Expenses; Indemnification.

(a) Without limiting any of their obligations under the Credit Agreement or the other Loan Documents, and without duplication of any fees, expenses or indemnification provided for under the Credit Agreement and the other Loan Documents, the Grantors jointly and severally agree to pay all reasonable out-of-pocket expenses incurred by the Agent, including the reasonable fees, charges and disbursements of any counsel and any outside consultants for the Agent, in connection with (i) the administration of this Agreement, (ii) the custody or preservation of, or the sale of, collection from or other realization upon any of the Collateral, (iii) the exercise, enforcement or protection of any of the Agent's Rights and Remedies hereunder or (iv) the failure of any Grantor to perform or observe any of the provisions hereof.

(b) Without limiting any of their indemnification obligations under the Credit Agreement or the other Loan Documents, and without duplication of any fees, expenses or indemnification provided for under the Credit Agreement and the other Loan Documents, the Grantors shall jointly and severally indemnify each Credit Party and each Related Party of any Credit Party (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of, (i) the execution or delivery or performance of this Agreement or any other Loan Document, the performance by any Grantor of its obligations under this Agreement or any other Loan Document, or the consummation of the transactions contemplated by the Loan Documents or any other transactions contemplated hereby, or (ii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing or to the Collateral, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the

extent that such losses, claims, damages, liabilities or related expenses resulted from the gross negligence, bad faith or willful misconduct of any Indemnitee or any Affiliate of an Indemnitee (or of any officer, director, employee, advisor or agent of such Indemnitee or any such Indemnitee's Affiliates). In connection with any indemnified claim hereunder, the Indemnitee shall be entitled to select its own counsel and the Grantors shall promptly pay the reasonable fees and expenses of such counsel.

(c) Any such amounts payable as provided hereunder shall be additional Secured Obligations secured hereby and by the other Security Documents. All amounts due under this Section 8.6 shall be payable promptly after written demand therefor.

(d) The provisions of this Section 8.6 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby and by the Credit Agreement, the occurrence of any event described in the definition of "Payment in Full", or the termination of this Agreement, the Credit Agreement or any provision hereof or thereof.

8.7 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

8.8 Waivers; Amendment.

(a) The rights, remedies, powers, privileges, and discretions of the Agent hereunder (herein, the "Agent's Rights and Remedies") shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. No delay or omission by the Agent in exercising or enforcing any of the Agent's Rights and Remedies shall operate as, or constitute, a waiver thereof. No waiver by the Agent of any Event of Default or of any Default under any other agreement shall operate as a waiver of any other Event of Default or other Default hereunder or under any other agreement. No single or partial exercise of any of the Agent's Rights or Remedies, and no express or implied agreement or transaction of whatever nature entered into between the Agent and any Person, at any time, shall preclude the other or further exercise of the Agent's Rights and Remedies. No waiver by the Agent of any of the Agent's Rights and Remedies on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. The Agent's Rights and Remedies may be exercised at such time or times and in such order of preference as the Agent may determine. The Agent's Rights and Remedies may be exercised without resort or regard to any other source of satisfaction of the Secured Obligations. No waiver of any provisions of this Agreement or any other Loan Document or consent to any departure by any Grantor 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 to or demand on any

Grantor in any case shall entitle such Grantor or any other Grantor to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to a written agreement entered into between the Agent and the Grantor or Grantors with respect to whom such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 9.2 of the Credit Agreement.

8.9 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH IN THIS SECTION 8.9.

8.10 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

8.11 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

8.12 Headings. Section headings used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

8.13 Jurisdiction; Consent to Service of Process.

(a) The Grantors agree that any suit for the enforcement of this Agreement or any other Loan Document may be brought in any court of the State of New York sitting in the Borough of Manhattan or any federal court sitting therein as the Agent may elect in its sole discretion and consent to the non-exclusive jurisdiction of such courts. The Grantors hereby waive any objection which they may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient forum. The Grantors agree that any action commenced by any Grantor asserting any claim or counterclaim arising under or in connection with this Agreement or any other Loan Document shall be brought solely in a court of the State of New York sitting in the Borough of Manhattan or any federal court sitting therein as the Agent may elect in its sole discretion and consent to the exclusive jurisdiction of such courts with respect to any such action.

(b) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 8.1. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

8.14 Termination; Release of Collateral.

(a) This Agreement, the Lien in favor of the Agent (for the benefit of itself and the other Credit Parties) and all other security interests granted hereby shall terminate with respect to all Secured Obligations upon Payment in Full of the Secured Obligations, provided, however, that (A) this Agreement, the Security Interest and all other security interests granted hereby shall be reinstated if at any time payment, or any part thereof, of any Secured Obligation is rescinded or must otherwise be restored by any Credit Party or any Grantor upon the bankruptcy or reorganization of any Grantor or otherwise, and (B) in connection with the termination of this Agreement, the Agent may require such indemnities and collateral security as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Secured Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to bank products or cash management services, and (z) any Secured Obligations that may thereafter arise under Section 9.3 of the Credit Agreement.

(b) The Collateral shall be released from the Lien of this Agreement in accordance with the provisions of the Credit Agreement. Upon termination hereof or any release of Collateral in accordance with the provisions of the Credit Agreement, the Agent shall, upon the request and at the sole cost and expense of the Grantors, assign, transfer and deliver to the Grantors, against receipt and without recourse to or warranty

by the Agent, such of the Collateral to be released (in the case of a release) or all of the Collateral (in the case of termination of this Agreement) as may be in possession of the Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Collateral, proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Collateral, as the case may be.

(c) At any time that the respective Grantor desires that the Agent take any action described in clause (b) of this Section 8.14, such Grantor shall, upon request of the Agent, deliver to the Agent an officer's certificate certifying that the release of the respective Collateral is permitted pursuant to clause (a) or (b) of this Section 8.14. The Agent shall have no liability whatsoever to any other Credit Party as the result of any release of Collateral by it as permitted (or which the Agent in good faith believes to be permitted) by this Section 8.14.

**[SIGNATURE PAGES FOLLOW]**





FIRST AMENDMENT TO THE SECOND AMENDED AND RESTATED PATENT AND TRADEMARK SECURITY AGREEMENT

THIS FIRST AMENDMENT TO THE SECOND AMENDED AND RESTATED PATENT AND TRADEMARK SECURITY AGREEMENT, dated as of November 20, 2017 (this "Amendment") is made by and among Geeknet, Inc., a Delaware corporation, having a place of business at 11216 Waples Mill Road Suite 100, Fairfax, Virginia 22030 (the "New Grantor"), GameStop Corp., a Delaware corporation, having a place of business at 625 Westport Parkway, Grapevine, Texas 76051, and the other Borrowers party hereto (individually, an "Existing Grantor", and collectively, the "Existing Grantors", and together with the New Grantor, individually, a "Grantor" and collectively, the "Grantors"), and Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the "Agent") for its own benefit and the benefit of the Credit Parties (as defined in the Credit Agreement referred to below).

WITNESSETH:

WHEREAS, reference is made to that certain Second Amended and Restated Credit Agreement dated as of March 25, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and between, among others, (i) the Existing Grantors, (ii) the Lenders from time to time party thereto, and (iii) the Agent for its own benefit and the benefit of the Credit Parties referenced therein;

WHEREAS, reference is further made to that certain Third Amended and Restated Security Agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement"), by and among the Grantors and the Agent, pursuant to which each Grantor granted a Lien and security interest in substantially all of such Grantors' right, title and interest in, to and under the Collateral (including, without limitation, the IP Collateral (as defined in the IP Security Agreement)) as security for the Secured Obligations (as defined in the Security Agreement);

WHEREAS, reference is further made to that certain Second Amended and Restated Patent and Trademark Security Agreement dated as of March 25, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "IP Security Agreement"), by and among the Existing Grantors and the Agent, pursuant to which each Existing Grantor ratified its grant of the Lien provided in the Security Agreement and further granted a Lien and security interest in the IP Collateral described therein, as security for the Secured Obligations;

WHEREAS, the Existing Grantors have advised the Agent that they have acquired new assets of the type constituting IP Collateral;

WHEREAS, contemporaneously herewith, the Agent and the Existing Grantors, among others, are amending the Credit Agreement pursuant to a certain Second

Amendment to Second Amended and Restated Credit Agreement (the “Second Amendment”), dated of even date herewith;

WHEREAS, contemporaneously herewith, the Grantors and the Agent are entering into that certain Joinder, Confirmation, Ratification and Amendment of Ancillary Loan Documents (the “Joinder Agreement”), dated of even date herewith, pursuant to which the New Grantor joins in the execution of, and becomes party to, the Credit Agreement and the Ancillary Loan Documents (as defined in the Joinder Agreement, including, without limitation the IP Security Agreement) as a Borrower, “Pledgor” or “Grantor” thereunder, as applicable;

WHEREAS, the Security Agreement requires that the Grantors confirm the attachment of the Lien and security interest created by the Security Agreement to the Additional IP Collateral (as defined below); and

WHEREAS, the Grantors and the Agent desire to amend the IP Security Agreement to evidence such attachment.

NOW, THEREFORE, each Grantor hereby agrees with the Agent as follows:

Section 1. Defined Terms. Capitalized terms used herein without definition are used as defined in the Credit Agreement, the Security Agreement or the IP Security Agreement, as applicable.

Section 2. Grant of Security Interest in Additional IP Collateral. In furtherance and as confirmation of the Security Interest granted by the Grantors to the Agent (for the ratable benefit of the Credit Parties) under the Security Agreement, and as further security for the payment or performance, as the case may be, in full of the Secured Obligations, each Grantor hereby ratifies such Security Interest and grants to the Agent (for the ratable benefit of the Credit Parties) a continuing security interest, with a power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default), in all of the present and future right, title and interest of the Grantors in and to the following property, and each item thereof, whether now owned or existing or hereafter acquired or arising, together with all products, proceeds, substitutions, and accessions of or to any of the following property (collectively, the “Additional IP Collateral”):

- (a) All Patents and Patent Licenses;
- (b) All Trademarks and Trademark Licenses;
- (c) All renewals of any of the foregoing;
- (d) All General Intangibles connected with the use of, or related to, any and all Intellectual Property (including, without limitation, all goodwill of

the Grantors and their business, products and services appurtenant to, associated with, or symbolized by, any and all Intellectual Property and the use thereof);

(e) All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all Licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof;

(f) The right to sue for past, present and future infringements and dilutions of any of the foregoing; and

(g) All of the Grantors' rights corresponding to any of the foregoing throughout the world.

Section 3. Amendment to IP Security Agreement. The IP Security Agreement is hereby amended by supplementing (but not replacing) Exhibit A thereof with the Patents and Patent Licenses for the foregoing listed on Exhibit A-1 hereto; and supplementing (but not replacing) Exhibit B thereof with the Trademarks and Trademark Licenses for the foregoing listed on Exhibit B-1 hereto. The parties hereto acknowledge and agree that the Additional IP Collateral shall constitute "IP Collateral" under the IP Security Agreement for all purposes.

Section 4. Security Agreement. The security interest granted pursuant to this Amendment is granted in conjunction with the security interest granted to the Agent pursuant to the Security Agreement and the IP Security Agreement, and each Grantor hereby acknowledges and agrees that the rights and remedies of the Agent with respect to the security interest in the Additional IP Collateral made and granted hereby are more fully set forth in the Security Agreement and the IP Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

Section 5. IP Security Agreement. Except as specifically amended hereby, the IP Security Agreement remains in full force and effect as of the date hereof.

Section 6. Counterparts. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by telecopy, pdf or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Amendment.

Section 7. Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**



