BIRKS & MAYORS INC.
Form 6-K
December 22, 2008

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 6-K

REPORT OF FOREIGN PRIVATE ISSUER PURSUANT TO RULE

13a-16 or 15d-16 UNDER THE SECURITIES EXCHANGE ACT OF 1934

For the month of December, 2008

Commission file number: 001-32635

BIRKS & MAYORS INC.

(Translation of Registrant s name into English)

1240 Phillips Square

Montreal Québec

Canada

H3B 3H4

(Address of principal executive office)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F.

x Form 20-F ¨ Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1): _____

Note: Regulation S-T Rule 101(b)(1) only permits the submission in paper of a Form 6-K if submitted solely to provide an attached annual report to security holders.

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7): _____

Note: Regulation S-T Rule 101(b)(7) only permits the submission in paper of a Form 6-K if submitted to furnish a report or other document that the registrant foreign private issuer must furnish and make public under the laws of the jurisdiction in which the registrant is incorporated, domiciled or legally organized (the registrant s home country), or under the rules of the home country exchange on which the registrant s securities are traded, as long as the report or other document is not a press release, is not required to be and has not been distributed to the registrant s security holders, and, if discussing a material event, has already been the subject of a Form 6-K submission or other Commission filing on EDGAR.

Indicate by check mark whether the registrant by furnishing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934.

¨ Yes x No

If Yes is marked, indicated below the file number assigned to the registrant in connection with Rule 12g3-2(b): 82-____

EXPLANATORY NOTE:

Birks & Mayors Inc. (the Company), together with its wholly-owned subsidiary, Mayor s Jewelers, Inc., finalized an amendment and extension of its senior secured revolving credit facility, dated December 17, 2008. The Company s $160 million senior secured revolving credit facility, which was set to expire on January 19, 2009, was amended and extended for a total of $135 million and will bear interest in the range of a LIBOR rate plus 2.5% to a LIBOR based rate plus 3.0% (based on excess availability thresholds) for up to a $124 million tranche of the facility and in the range of a LIBOR based rate plus 4.5% to a LIBOR based rate plus 5.0% (based on excess availability thresholds) for an $11 million tranche of the facility. In addition, the Company obtained a $13 million secured term loan that is subordinated in lien priority to its senior secured revolving credit facility and bears interest at a rate of the greater of (i) 16% per annum or (ii) one-month LIBOR based rate plus 12%. These two credit facilities have a three-year term expiring on December 16, 2011 and will primarily be used to finance inventory, capital expenditures, working capital and provide liquidity for other general corporate purposes.

The foregoing description of the senior secured revolving credit facility and the secured term loan agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the senior secured revolving credit facility and the secured term loan agreement, a copy of which are furnished as Exhibit 10.1 and Exhibit 10.2, respectively, to this Form 6-K.

On December 18, 2008, the Company issued a press release announcing the amendment and extension of its senior secured revolving credit facility and its secured term loan agreement, which press release is furnished as Exhibit 99.1 to this Form 6-K.

DOCUMENTS SUBMITTED HEREWITH:

10.1 Amended and Restated Revolving Credit and Security Agreement, dated as of December 17, 2008, among Birks & Mayors Inc., Mayor s Jewelers, Inc., Certain Financial Institutions, as Lenders, Bank of America, N.A., as Administrative Agent, Bank of America, N.A. (acting through its Canada branch), as Canadian Agent, and Banc of America Securities, LLC, as Sole Lead Arranger and Sole Book Manager

10.2 Term Loan and Security Agreement, dated as of December 17, 2008, among Birks & Mayors Inc., Mayor s Jewelers, Inc., Certain Financial Institutions, as Lenders, and GB Merchant Partners, LLC, as Administrative Agent

99.1 Press release dated December 18, 2008

SIGNATURES

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

BIRKS & MAYORS INC.
(Registrant)

By: /s/ Michael Rabinovitch
Michael Rabinovitch
Senior Vice President and Chief Financial Officer

Date: December 22, 2008

EXHIBIT INDEX

Exhibit Number	Description
Exhibit 10.1	Amended and Restated Revolving Credit and Security Agreement, dated as of December 17, 2008, among Birks & Mayors Inc., Mayor s Jewelers, Inc., Certain Financial Institutions, as Lenders, Bank of America, N.A., as Administrative Agent, Bank of America, N.A. (acting through its Canada branch), as Canadian Agent, and Banc of America Securities, LLC, as Sole Lead Arranger and Sole Book Manager
Exhibit 10.2	Term Loan and Security Agreement, dated as of December 17, 2008, among Birks & Mayors Inc., Mayor s Jewelers, Inc., Certain Financial Institutions, as Lenders, and GB Merchant Partners, LLC, as Administrative Agent
Exhibit 99.1	Press release dated December 18, 2008

Exhibit 10.1

MAYOR S JEWELERS, INC.,

as the US Borrower

BIRKS & MAYORS INC.,

as the Canadian Borrower

Collectively, the Borrowers

AND THEIR SUBSIDIARIES PARTY HERETO,

as Guarantors

AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT

Dated as of December 17, 2008

CERTAIN FINANCIAL INSTITUTIONS,

as Lenders,

BANK OF AMERICA, N.A.,

as Administrative Agent

and

BANK OF AMERICA, N.A. (acting through its Canada branch),

as Canadian Agent

BANC OF AMERICA SECURITIES, LLC,

as Sole Lead Arranger and Sole Book Manager

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Exhibit D	Form of Assignment and Assumption Agreement
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AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT

THIS AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT (THIS AGREEMENT) IS ENTERED INTO AS OF DECEMBER 17, 2008, AMONG **MAYOR S JEWELERS, INC.,** A DELAWARE CORPORATION (THE US BORROWER), **BIRKS & MAYORS INC.**, A CANADIAN CORPORATION (THE CANADIAN BORROWER AND, TOGETHER WITH THE US BORROWER, COLLECTIVELY, THE BORROWERS AND EACH INDIVIDUALLY, A BORROWER), EACH SUBSIDIARY OF THE BORROWERS FROM TIME TO TIME PARTY HERETO AS A GUARANTOR, EACH LENDER FROM TIME TO TIME PARTY HERETO (COLLECTIVELY, THE LENDERS AND EACH INDIVIDUALLY, A LENDER), **BANK OF AMERICA, N.A.** (IN ITS INDIVIDUAL CAPACITY, BANK OF AMERICA), AS ADMINISTRATIVE AGENT AND ISSUING BANK, AND **BANK OF AMERICA, N.A.**, **ACTING THROUGH ITS CANADA BRANCH** (IN ITS INDIVIDUAL CAPACITY, BANK OF AMERICA-CANADA BRANCH), AS CANADIAN AGENT AND ISSUING BANK.

R E C I T A L S:

WHEREAS, the Borrowers, the Guarantors, the lenders party thereto (the Existing Lenders), the Administrative Agent, the Canadian Agent and the Issuing Banks are party to that certain Revolving Credit, Tranche B Loan and Security Agreement, dated as of January 19, 2006 (as amended and in effect immediately prior to the date hereof, the Existing Credit Agreement), pursuant to which the Existing Lenders made loans to and issued letters of credit for the account of the Borrowers.

WHEREAS, the Lenders are willing to amend and restate the Existing Credit Agreement, and the Lenders are willing to make loans and other extensions of credit to the Borrowers, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto hereby agree that, from and after the Closing Date, the Existing Credit Agreement (including all Annexes, Schedules and Exhibits thereto) is amended and restated in its entirety as follows:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

1.1. Definitions. As used herein, the following terms have the meanings set forth below:

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

Account Debtor as defined in the UCC and including a Person who is obligated under an Account, Chattel Paper or General Intangible.

Acquisition the acquisition of all or substantially all of the assets of Brinkhaus The Jewellery Source Ltd. and certain assets of Brinkhaus Jewels Limited pursuant to the terms of the Acquisition Agreement.

Acquisition Agreement the Asset Purchase Agreement, dated on or about November 1, 2007, among Brinkhaus, as sellers, and the Canadian Borrower, as purchaser, as amended by that certain First Amendment dated as of January 28, 2008.

Acquisition Notes each of the promissory notes executed and delivered in connection with the Acquisition pursuant to the terms of the Acquisition Agreement, made by the Canadian Borrower to the sellers identified in the Acquisition Agreement in an aggregate principal amount not to exceed Cdn. $9,000,000 at any time and subject at all times to a subordination agreement in form, scope and substance reasonably satisfactory to the Agents.

Adjusted LIBOR for any Interest Period, with respect to LIBOR Loans, the per annum rate of interest (rounded upward, if necessary, to the nearest 1/8th of 1%) appearing on Reuters Screen LIBOR01 Page, or if such page is unavailable, such other Reuters Screen LIBO Page (or any successor page of either, as applicable), as the London interbank offered rate for deposits in Dollars at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, however, if the Reuters Screen LIBO Page is used and more than one rate is shown on such page, the applicable rate shall be the arithmetic mean thereof. If for any reason none of the foregoing rates is available, the Adjusted LIBOR shall be the rate per annum determined by the Administrative Agent as the rate of interest at which Dollar deposits in the approximate amount of the applicable LIBOR Loan would be offered to major banks in the offshore Dollar market at or about 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period.

Administrative Agent Bank of America, N.A., in its capacity as administrative agent for the US Lenders and as collateral agent for the Secured Parties regarding all matters concerning Collateral of the US Loan Parties and any other Non-Canadian Loan Party and Collateral of the Canadian Loan Parties situated in the United States, or any successor Administrative Agent.

Affiliate with respect to any Person, another Person (a) who directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such first Person; (b) who beneficially owns 10% or more of the voting securities or any class of Capital Stock of such first Person; (c) at least 10% of whose voting securities or any class of Capital Stock is beneficially owned, directly or indirectly, by such first Person; or (d) who is an officer, director, partner or managing member of such first Person. Control means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a Person, whether through ownership of Capital Stock, by contract or otherwise.

Agent Indemnitees each Agent and its officers, directors, employees, Affiliates, agents, advisors and attorneys.

Agent Professionals attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by any Agent.

Agents collectively, the Administrative Agent and the Canadian Agent.

Aggregate Borrowing Capacity as of any date of determination, an amount equal to the sum of (a) the Aggregate Revolver Borrowing Capacity plus (b) the Tranche A-1 Borrowing Capacity.

Aggregate Excess Availability as of any date of determination, an amount equal to the sum of (a) Revolver Excess Availability plus (b) Tranche A-1 Excess Availability.

Aggregate Revolver Borrowing Capacity as of any date of determination, an amount equal to the lesser of (a) the sum of (i) the US Borrowing Capacity (without giving effect to clause (a) thereof) plus (ii) the Dollar Equivalent of the Canadian Borrowing Capacity (without giving effect to clause (a) thereof) and (b) the Total Revolver Commitments.

Anti-Terrorism Laws any laws relating to terrorism or money laundering, including the Patriot Act.

Applicable Agent with respect to (a) the US Loan Parties, all Loans and Letters of Credit issued for the account or benefit of the US Borrower, all matters concerning Collateral of the US Loan Parties and any other Non-Canadian Loan Parties, and all matters concerning Collateral of the Canadian Loan Parties situated in the United States, the Administrative Agent, and (b) the Canadian Loan Parties, all Loans and Letters of Credit issued for the account or benefit of the Canadian Borrower, all matters concerning Collateral of the Canadian Loan Parties, and all matters concerning Collateral of the other Loan Parties situated in Canada, the Canadian Agent.

Applicable Law all laws, rules, regulations and governmental guidelines and orders applicable to the Person, conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

Applicable Lenders with respect to (a) US Revolver Loans and Letters of Credit issued for the account or benefit of the US Borrower, the US Lenders, (b) Canadian Revolver Loans and Letters of Credit issued for the account or benefit of the Canadian Borrower, the Canadian Lenders and (c) Tranche A-1 Loans for the account or benefit of any Borrower, the Tranche A-1 Lenders.

Applicable Margin the Applicable Margin for each calendar quarter shall be the applicable margin set forth below with respect to the average daily level of Aggregate Excess Availability during the previous calendar quarter:

Pricing Level	Aggregate Excess Availability	Base Rate Revolver Loans/ Canadian Prime Rate Loans	LIBOR Revolver Loans/ Canadian BA Rate Loans	Base Rate Tranche A-1 Loans	LIBOR Tranche A-1 Loans	Standby Letter of Credit Fee	Documentary Letter of Credit Fee
I	**Greater than $75,000,000**	2.75%	2.50%	4.75%	4.50%	2.25%	1.25%
II	**Less than or equal to $75,000,000 but greater than $25,000,000**	3.00%	2.75%	5.00%	4.75%	2.50%	1.375%
III	**Less than or equal to $25,000,000**	3.25%	3.00%	5.25%	5.00%	2.75%	1.50%

Notwithstanding the foregoing, the Applicable Margin in effect from the Closing Date through the first calendar quarter ending after the six month anniversary of the Closing Date shall be the Applicable Margin set forth in Level III above. Thereafter, the margins shall be subject to increase or decrease on a quarterly basis. Not more than ten (10) Business Days after the first day of each calendar quarter, the Administrative Agent shall determine the Applicable Margin for such calendar quarter (which shall be effective as of the first calendar day of such calendar quarter) based on the Aggregate Excess Availability for the prior calendar quarter. If, as a result of any restatement of or other adjustment to the Aggregate Excess Availability calculations or for any other reason, the Borrowers or the Administrative Agent determines that (i) the Aggregate Excess Availability as calculated by the Borrowers as of any applicable date was inaccurate and (ii) a proper calculation of the Aggregate Excess Availability would have resulted in higher pricing for such period, the Borrowers shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the Applicable Lenders or the Issuing Banks, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrowers under any Insolvency Proceeding, automatically and without further action by the Administrative Agent, any Lender or the Issuing Banks), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the Issuing Banks hereunder and the Borrowers obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

Applicable Pension Legislation at any time, any pension or retirement benefits legislation (be it national, federal, provincial, territorial, foreign or otherwise) then applicable to the Borrowers or any of their Subsidiaries.

Appraised A/R Liquidation Value the product of (a) the net book value of Eligible Private Label and Corporate Accounts multiplied by (b) the percentage with regards to each category of accounts determined from the then most recent appraisal of Eligible Private Label and Corporate Accounts undertaken at the request of the Administrative Agent, to reflect the appraised estimate of the net recovery on the Eligible Private Label and Corporate Accounts on a forced liquidation basis.

Appraised Inventory Liquidation Value with respect to each Eligible Inventory Category, the product of (a) the Cost of Eligible Inventory (net of Inventory Reserves) of such Eligible Inventory Category multiplied by (b) that percentage with regards to each category of Inventory, determined from the then most recent appraisal of the Inventory of the Borrowers, Henry U.S. and Mayor s Florida undertaken at the request of the Administrative Agent, to reflect the appraiser s estimate of the net recovery on the relevant Inventory of such Person in the event of an in-store liquidation of that Inventory.

Approved Fund any Person (other than a natural person) that is engaged in making, holding or investing in extensions of credit in its ordinary course of business and is administered or managed by a Lender, an entity that administers or manages a Lender, or an Affiliate of either.

Arranger Banc of America Securities LLC, in its capacity as sole lead arranger and sole book manager.

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

Assignment and Assumption Agreement an assignment and assumption agreement between a Lender and Eligible Assignee, substantially in the form of **Exhibit D** hereto.

Auto-Extension Letter of Credit as defined in **Section 2.3.1(g)**.

Auto-Reinstatement Letter of Credit as defined in **Section 2.3.1(h)**.

Availability Block as of any date of determination, the greater of (i) ten percent (10%) multiplied by the sum of clauses (i) through (iii) of the definition of Term Loan Borrowing Capacity; or (ii) $15,000,000.00.

Availability Reserves the sum (without duplication) of (a) the Inventory Reserve; (b) the Rent and Charges Reserve; (c) the Bank Product Reserve; (d) the aggregate amount of liabilities secured by Liens upon Collateral that are senior or pari passu to the Applicable Agent s Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (e) reserves established by the Administrative Agent based on Customer Credit Liabilities; (f) reserves established by the Administrative Agent based on appraisals (including, without limitation, desktop appraisals) and field exams of the Collateral and commercial finance exams of the Loan Parties books and records; (g) Taxes which might have priority over the interests of the Agents in the Collateral; (h) reserves established by the Administrative Agent based on outstanding accounts payable owing to consignment vendors; (i) the Tranche A-1 Reserve; (j) Availability Block; (k) Seasonal Availability Block; (l) the Brinkhaus Reserve; (m) the Quebec Subordinated Debt Reserve; (n) the Loan to Value Reserve; (o) the Term Loan Discretionary Reserve; and (p) such additional reserves as the Administrative Agent from time to time determines in the Administrative Agent s reasonable discretion as being appropriate (without limiting the generality of this clause (p), reserves that (x) ensure that the Loan Parties maintain adequate liquidity for the operation of their business, (y) cover any deterioration in the amount or value of the Collateral and (z) reflect impediments to the Applicable Agent s ability to realize upon the Collateral, shall, in each case, be deemed to be a reasonable exercise of the Administrative Agent s discretion). The Administrative Agent shall impose the Availability Block, the Seasonal Availability Block, the Brinkhaus Reserve, the Quebec Subordinated Debt Reserve, the Loan to Value Reserve and the Term Loan Discretionary Reserve.

Bank of America Bank of America, N.A., a national banking association, and its successors and assigns.

Bank of America-Canada Branch Bank of America, N.A. (acting through its Canada branch).

Bank of America Indemnitees Bank of America and its officers, directors, employees, Affiliates, branches (including Bank of America-Canada Branch), agents, mandataries, advisors and attorneys.

Bank Product any of the following products, services or facilities extended to the Loan Parties or any Subsidiary by any Lender or any of its Affiliates: (a) Cash Management Services; and (b) Leasing Obligations; provided, however, that for any of the foregoing to be included as an Obligation for purposes of a distribution under **Section 5.5** and for purposes of the Security Documents, the applicable bank product provider and Loan Party must have previously provided written notice to the Administrative Agent of (i) the existence of such Bank Product, (ii) the maximum dollar amount of obligations arising thereunder to be included as a Bank Product Reserve (Bank Product Amount), and (iii) the methodology to be used by such parties in determining the Bank Product Debt owing from time to time. The Bank Product Amount may be changed from time to time upon written notice to the Administrative Agent by the provider of the Bank Product and the applicable Loan Party.

Bank Product Amount as defined in the definition of Bank Product.

Bank Product Debt Debt and other obligations of a Loan Party relating to Bank Products.

Bank Product Reserve the aggregate amount of reserves reasonably established by the Administrative Agent from time to time in respect of Bank Product Debt.

Bankruptcy Code Title 11 of the United States Code.

Base Rate for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its prime rate , and (c) Adjusted LIBOR for an Interest Period of 1-month beginning on such day plus 100 basis points. 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 the prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

Base Rate Loan any Loan that bears interest based on the Base Rate.

Base Rate Revolver Loan a Revolver Loan that bears interest at the Base Rate.

Base Rate Tranche A-1 Loan a Tranche A-1 Loan that bears interest at the Base Rate.

Birks Birks & Mayors Inc., a Canadian corporation.

BME IPCO BME IPCO, Inc., a Delaware corporation, constituted as a joint venture in which the Canadian Borrower owns 50% of the issued and outstanding Capital Stock of BME IPCO and Esty Grossman, an individual, owns the remaining 50% of the issued and outstanding Capital Stock of BME IPCO.

BME IPCO Distribution Agreement that certain Jewellery Design and Distribution Agreement entered into in Montreal, Quebec, Canada on August 31, 2006, between Esty Grossman, an individual, the Canadian Borrower and BME IPCO, as in effect on November 9, 2006, a copy of which is on file with the Administrative Agent.

Board of Governors the Board of Governors of the Federal Reserve System.

Borrower and Borrowers as defined in the preamble hereto.

Borrower Agent as defined in **Section 4.4**.

Borrowing a group of Loans of one Type that are made on the same day or are converted into Loans of one Type on the same day.

Borrowing Base Certificate a certificate, substantially in the form of **Exhibit F** or in such other form satisfactory to the Administrative Agent, by which the Borrowers certify calculation of the US Borrowing Capacity, the Canadian Borrowing Capacity, the Tranche A-1 Borrowing Capacity, the Aggregate Revolver Borrowing Capacity, the Aggregate Borrowing Capacity and the Term Loan Borrowing Capacity.

Brinkhaus collectively, Brinkhaus The Jewellery Source Ltd. and Brinkhaus Jewels Limited.

Brinkhaus Location the locations of the Canadian Borrower described on **Schedule 1.2**.

Brinkhaus Reserve the lesser of (i) 18% of the Appraised Inventory Liquidation Value of the Eligible Inventory purchased by the Canadian Borrower from Brinkhaus or located at any Brinkhaus Location, in each case as described in the most recent Borrowing Base Certificate delivered by the Borrowers to the Administrative Agent in accordance with **Section 8.1**, and (ii) the Brinkhaus Subordinated Debt then outstanding.

Brinkhaus Subordinated Debt all Debt owing to Brinkhaus under the Brinkhaus Subordinated Debt Documents, which Debt shall be expressly subordinate to Full Payment of the Obligations pursuant to the Brinkhaus Subordination Agreement.

Brinkhaus Subordinated Debt Documents the Acquisition Agreement, the Acquisition Notes, and all other documents, instruments and agreements executed in connection therewith.

Brinkhaus Subordination Agreement the Postponement and Subordination Agreement, dated as of November 7, 2007, among Brinkhaus, the Canadian Agent and the Administrative Agent.

Business Day any day (a) excluding Saturday, Sunday and any other day on which banks are permitted to be closed under the laws of the State of New York, (b) when used with reference to a LIBOR Loan, also excluding any day on which banks do not conduct dealings in Dollar deposits on the London interbank market and (c) when used with reference to a Canadian Revolver Loan, also excluding any other day on which banks are permitted or required to be closed in Toronto, Ontario, Canada or in Montréal, Québec, Canada.

Canadian Agent Bank of America-Canada Branch having a branch in Toronto, Ontario, Canada, in its capacity as administrative agent for the Canadian Lenders and as collateral agent for the Secured Parties regarding all matters concerning Collateral of the Canadian Loan Parties and Collateral of all other Loan Parties situated in Canada, or any successor Canadian Agent.

Canadian BA Rate for the Interest Period of each Canadian BA Rate Loan, the rate of interest per annum equal to the annual rates applicable to Canadian Dollar bankers acceptances having an identical or comparable term as the proposed Canadian BA Rate Loan displayed and identified as such on the display referred to as the CDOR Page (or any display substituted therefor) of Reuter Monitor Money Rates Service as at approximately 10:00 A.M. Eastern time on such day (or, if such day is not a Business Day, as of 10:00 A.M. Eastern time on the immediately preceding Business Day) plus five (5) basis points; provided that if such rates do not appear on the CDOR Page at such time on such date, the rate for such date will be the annual discount rate (rounded upward to the nearest whole multiple of $^{1}/_{100}$ of 1%) as of 10:00 A.M. Eastern time on such day at which a Canadian chartered bank listed on Schedule 1 of the *Bank Act* (Canada) as selected by the Canadian Agent is then offering to purchase Canadian Dollar bankers acceptances accepted by it having such specified term (or a term as closely as possible comparable to such specified term), plus five (5) basis points.

Canadian BA Rate Loans Canadian Revolver Loans bearing interest calculated by reference to the Canadian BA Rate.

Canadian Borrower as defined in the preamble hereto.

Canadian Borrowing Capacity on any date of determination, an amount in Canadian Dollars equal to the lesser of (a) the aggregate amount of Canadian Revolver Commitments and (b) the sum of (i) 85% of the Appraised Inventory Liquidation Value of each Eligible Inventory Category owned by the Canadian Borrower; plus (ii) 92% of the Appraised A/R Liquidation Value of Eligible Private Label and Corporate Accounts of the Canadian Borrower; plus (iii) 92% of the Eligible Major Credit Card Receivables of the Canadian Borrower; minus (iv) the Availability Reserve in respect of the Canadian Borrower (it being understood that the amount of the Availability Block, the Seasonal Availability Block, the Brinkhaus Reserve, the Quebec Subordinated Debt Reserve, the Loan to Value Reserve, the Term Loan Discretionary Reserve and the Tranche A-1 Reserve shall be allocated, in the sole discretion of the Administrative Agent and without duplication, among the Aggregate Borrowing Capacity, the Canadian Borrowing Capacity and the US Borrowing Capacity).

Canadian Commitment Termination Date the earliest to occur of (a) the Termination Date; (b) the date on which the Canadian Revolver Commitments are terminated pursuant to **Section 2.2**; or (c) the date on which the Canadian Revolver Commitments are terminated pursuant to **Section 11.2**.

Canadian Concentration Account a special concentration account established by the Canadian Borrower with the Canadian Agent, subject to the control of the Canadian Agent.

Canadian Debtor Relief Laws means the Bankruptcy and Insolvency Act (Canada), the Companies Creditors Arrangement Act (Canada), the Winding-up Act (Canada) and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, dissolution or similar debtor relief laws of Canada.

Canadian Dollar Equivalent of any amount means, at the time of determination thereof, (a) if such amount is expressed in Canadian Dollars, such amount and (b) if such amount is denominated in any other currency, the equivalent of such amount in Canadian Dollars as determined by the Administrative Agent using the published spot rate as quoted by Bank of America or its branches or Affiliates to customers generally as its noon spot rate at which such currency is offered on such day for Canadian Dollars.

Canadian Dollars or Cdn. $ the lawful currency of Canada.

Canadian Guarantors all Subsidiaries of the Borrowers that have executed a Guaranty and are organized under the laws of Canada or any province or territory thereof.

Canadian LC Conditions the following conditions necessary for issuance of a Letter of Credit for the account or benefit of the Canadian Borrower: (a) each of the conditions set forth in **Section 6**; (b) after giving effect to such issuance, Total LC Obligations do not exceed the Letter of Credit Subline, Total Canadian Revolver Outstandings do not exceed the Canadian Borrowing Capacity, and Total Revolver Outstandings do not exceed the Aggregate Revolver Borrowing Capacity; (c) the

expiration date of such Letter of Credit is (i) subject to **Section 2.3.1(g)** in respect of Auto-Extension Letters of Credit, no more than 365 days from issuance, in the case of standby Letters of Credit, (ii) no more than 180 days from issuance, in the case of documentary Letters of Credit, and (iii) at least 20 Business Days prior to the Termination Date; (d) the Letter of Credit and payments thereunder are denominated in Dollars or Canadian Dollars; and (e) the form of the proposed Letter of Credit is reasonably satisfactory to the Canadian Agent and the Issuing Banks in their discretion.

Canadian LC Obligations an amount equal to the sum (without duplication) of the Canadian Dollar Equivalent of (a) all amounts owing by the Canadian Borrower for any drawings under Letters of Credit (including in respect of any payment made by Bank of America-Canada Branch, as Issuing Bank under any LC Guaranty) issued for the account or on behalf of the Canadian Borrower; (b) the aggregate undrawn amount of all outstanding Letters of Credit issued for the account or on behalf of the Canadian Borrower; and (c) all fees and other amounts owing with respect to Letters of Credit issued for the account or on behalf of the Canadian Borrower.

Canadian Lenders the Lenders indicated on **Schedule 1.1(a)** as the Lenders of Canadian Revolver Loans, the Canadian Agent in its capacity as a provider of Swingline Loans, Bank of America-Canada Branch, as the Issuing Bank (unless the context otherwise requires) and any other Person who hereafter becomes a Canadian Lender pursuant to the terms hereof. It is acknowledged and understood that, as of the Closing Date, each Canadian Lender shall be a Canadian Qualified Lender.

Canadian Loan Parties collectively, the Canadian Borrower and the Canadian Guarantors.

Canadian Obligations all Obligations of the Canadian Loan Parties.

Canadian Plan any pension or other employee benefit plan and which is: (a) a plan maintained by any Canadian Loan Party or any Subsidiary of a Canadian Loan Party; (b) a plan to which any Canadian Loan Party or any Subsidiary of a Canadian Loan Party contributes or is required to contribute; (c) a plan to which any Canadian Loan Party or any Subsidiary of a Canadian Loan Party was required to make contributions at any time during the five (5) calendar years preceding the date of this Agreement; or (d) any other plan with respect to which any Canadian Loan Party or any Subsidiary or Affiliate of a Canadian Loan Party has incurred or may incur liability, including contingent liability either to such plan or to any Person, administration or Governmental Authority, including the FSCO.

Canadian Prime Rate on any day, the rate per annum equal to the higher of (a) the rate of interest quoted by Bank of America-Canada Branch for commercial demand loans made by it in Canada in Canadian Dollars and (b) the Canadian BA Rate for an Interest Period of 1-month beginning on such day plus 100 basis points. The Canadian Prime Rate is a rate set by Bank of America-Canada Branch based upon various factors including Bank of America-Canada Branch 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 the Canadian Prime Rate announced by the Canadian Agent shall take effect at the opening of business on the day specified by the Canadian Agent.

Canadian Prime Rate Loans Canadian Revolver Loans bearing interest at the Canadian Prime Rate.

Canadian Qualified Lender a financial institution (a) that is not a non-resident of Canada for the purpose of the ITA, or (b) that is an authorized foreign bank as defined in Section 2 of the Bank Act (Canada), or (c) whose activities are not regulated by the Bank Act (Canada) and, in each case under clause (b) and (c) that is dealing at arms length from the Canadian Borrower within the meaning of the ITA.

Canadian Revolver Commitment for any Canadian Lender, its obligation to make Canadian Revolver Loans and to participate in Canadian LC Obligations up to the maximum principal amount shown on **Schedule 1.1(a)**, or as specified hereafter in the most recent Assignment and Assumption Agreement to which it is a party (as such amount may be increased or decreased pursuant to the terms hereof). Canadian Revolver Commitments means the aggregate amount of such commitments of all Canadian Lenders. On the Closing Date, the Canadian Revolver Commitments are Cdn. $124,000,000.

Canadian Revolver Excess Availability as of any date of determination, an amount equal to the Canadian Borrowing Capacity, minus the Total Canadian Revolver Outstandings.

Canadian Revolver Loans (a) a Loan made pursuant to **Section 2.1.1(c)**, (b) any Swingline Loan for the account of the Canadian Borrower, (c) any Overadvance Loan for the account of the Canadian Borrower deemed by the Canadian Agent to be a Canadian Revolver Loan or (d) any Protective Advance deemed by the Canadian Agent to be a Canadian Revolver Loan.

Canadian Revolver Note a promissory note to be executed by the Canadian Borrower in favor of a Canadian Lender in the form of **Exhibit C**, which shall be in the amount of such Canadian Lender s Canadian Revolver Commitment and shall evidence the Canadian Revolver Loans made by such Canadian Lender.

Canadian Revolver Overadvance as defined in **Section 2.1.4**.

Canadian Security Documents the General Security Agreement and the deed of hypothec charging the universality of moveable property each granted by the Canadian Loan Parties in favor of the Canadian Agent, together with all security agreements, deeds of hypothec, pledge agreements, or other collateral security agreements, instruments or documents (including Lien Waivers, Lien Priority Agreements and estoppel letters) entered into or to be entered into by any Loan Party pursuant to which such Loan Party grants or perfects a security interest in its assets to the Canadian Agent, including, without limitation PPSA and UCC financing statements and certified statements issued by the Québec Register of Personal and Movable Real Rights, required to be executed or delivered pursuant to any Canadian Security Document.

Capital Adequacy Regulation any law, rule, regulation, guideline, request or directive of any central bank or other Governmental Authority, whether or not having the force of law, regarding capital adequacy of a bank or any Person controlling a bank.

Capital Assets fixed assets, both tangible (such as land, buildings, fixtures, machinery and equipment) and intangible (such as patents, copyrights, trademarks, franchises and goodwill); provided that Capital Assets shall not include any item customarily charged directly to expense or depreciated over a useful life of twelve (12) months or less in accordance with GAAP.

Capital Expenditures amounts paid or Debt incurred by the Borrowers or any of their Subsidiaries in connection with (i) the purchase or lease by the Borrowers or any of their Subsidiaries of Capital Assets that would be required to be capitalized

and shown on the balance sheet of such Person in accordance with GAAP or (ii) the lease of any assets by the Borrowers or any of their Subsidiaries as lessee under any synthetic lease to the extent that such assets would have been Capital Assets had the synthetic lease been treated for accounting purposes as a Capital Lease

Capital Lease any lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

Capital Stock (a) in the case of a corporation, corporate stock; (b) in the case of an association or other business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

Cash Collateral cash, and any interest or other income earned thereon, that is delivered to the Applicable Agent to Cash Collateralize any Obligations.

Cash Collateral Account a demand deposit, money market or other account established by the Applicable Agent at Bank of America or its Affiliates or branches, which account shall be subject to such Agent s first priority perfected Liens for the benefit of the Secured Parties.

Cash Collateralize the delivery of cash to the Applicable Agent, as security for the payment of Obligations, in an amount equal to (a) with respect to US LC Obligations or Canadian LC Obligations, 105% of the aggregate US LC Obligations or Canadian LC Obligations, as the case may be, and (b) with respect to any inchoate, contingent or other Obligations (including Obligations arising under Bank Products), the Administrative Agent s good faith estimate of the amount due or to become due, including all fees and other amounts relating to such Obligations. Cash Collateralization has a correlative meaning.

Cash Equivalents (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the United States government or issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within 12 months of the date of acquisition; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within 12 months after such date and having, at the time of acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody s; (c) certificates of deposit, time deposits and bankers acceptances maturing within 12 months of the date of acquisition, and overnight bank deposits, in each case which are issued by a commercial bank organized under (i) the laws of the United States or any state or district thereof or (ii) the laws of Canada or any province or territory thereof, in each case, rated A-1 (or better) by S&P or P-1 (or better) by Moody s at the time of acquisition; (d) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) and (c) entered into with any bank meeting the qualifications specified in clause (c); (e) commercial paper rated A-1 (or better) by S&P or P-1 (or better) by Moody s, and maturing within twelve months of the date of acquisition; and (f) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above, has net assets of at least $500,000,000 and has the highest rating obtainable from either Moody s or S&P.

Cash Management Services any services provided from time to time by any Agent, any Lender or any of its Affiliates to any Borrower, any Guarantor or any Subsidiary in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automatic clearinghouse, controlled disbursement, depository, electronic funds transfer, information reporting, lockbox, stop payment, overdraft and/or wire transfer services.

CERCLA the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.).

Civil Code of Québec the Civil Code of Québec as in effect from time to time.

Change of Control at any time, the occurrence of one or more of the following events: (i) Birks shall cease to own directly or indirectly at least fifty-one percent (51%) of the issued and outstanding Voting Stock of Mayor s, (ii) Montrovest B.V. shall cease to own directly or indirectly at least fifty-one percent (51%) of the votes attaching to the Voting Stock of Birks or (iii) Mayors shall cease to own directly or indirectly all of the economic and voting rights associated with all of the outstanding Capital Stock of any of its Subsidiaries.

Chattel Paper as defined in the UCC.

Claims as defined in **Section 14.2**.

Closing Date as defined in **Section 6.1**.

Code the Internal Revenue Code of 1986, as amended and in effect from time to time.

Collateral all Property described in **Section 7.1**, all Property described in any Security Document as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

Collateral Value Report as defined in Section 10.1.1.

Commercial Tort Claim as defined in the UCC.

Commitments collectively, the US Revolver Commitments, the Canadian Revolver Commitments and the Tranche A-1 Commitments.

Commitment Termination Date the earliest to occur of (a) the Termination Date; (b) the date on which the Commitments are terminated pursuant to **Section 2.2**; or (c) the date on which the Commitments are terminated pursuant to **Section 11.2**.

Compliance Certificate a certificate, substantially in the form of **Exhibit E** hereto or such other form approved by the Administrative Agent, by which the Borrowers certify, among other things, the absence of Defaults or Events of Default or, to the extent either exist, describing the nature of such Default or Event of Default and the Borrowers plan to address such Default or Event of Default.

Concentration Accounts collectively, the US Concentration Account and the Canadian Concentration Account.

Consolidated or consolidated with reference to any term defined herein, shall mean that term as applied to the accounts of the Borrowers and their Subsidiaries, consolidated in accordance with GAAP.

Consolidated EBITDA with respect to any fiscal period, an amount equal to the sum of (a) Consolidated Net Income of the Borrowers and their Subsidiaries for such fiscal period, plus (b) in each case to the extent deducted in the calculation of such Persons Consolidated Net Income and without duplication, (i) depreciation and amortization for such period, plus (ii) income tax expense for such period, plus (iii) Consolidated Total Interest Expense paid or accrued during such period, plus (iv) other noncash charges for such period, all as determined in accordance with GAAP.

Consolidated Fixed Charges for any period of the Borrowers and their Subsidiaries, determined on a Consolidated basis, without duplication, the sum of (a) Consolidated Total Interest Expense accrued during such period, plus (b) all payments of principal made or required to be made with respect to Debt (other than (i) the Loans to the extent such payments do not permanently reduce the applicable Commitments and (ii) Management Debt to the extent such payments constitute an expense in the calculation of Consolidated Net Income) during such period, plus (c) to the extent not constituting Debt, all Restricted Junior Payments made or required to be made in cash during such period.

Consolidated Net Income (or Deficit) the consolidated net income (or deficit) of the Borrowers and their Subsidiaries, after deduction of all expenses, Taxes, and other proper charges, determined in accordance with GAAP, after eliminating therefrom all extraordinary nonrecurring items of income.

Consolidated Total Interest Expense for any period, the aggregate amount of interest required to be paid or accrued by the Borrowers and their Subsidiaries during such period on all Debt of the Borrowers and their Subsidiaries outstanding during all or any part of such period, whether such interest was or is required to be reflected as an item of expense or capitalized, including payments consisting of interest in respect of any Capital Lease or any synthetic lease, and including commitment fees, agency fees, facility fees, balance deficiency fees and similar fees or expenses in connection with the borrowing of money, but excluding amortization of closing fees and expenses.

Contingent Obligation any obligation of a Person arising from a guaranty, indemnity or other assurance of payment or performance of any Debt, lease, dividend or other obligation (primary obligations) of another obligor (primary obligor) in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty, endorsement, co-making or sale with recourse of an obligation of a primary obligor; (b) obligation to make take-or-pay or similar payments regardless of nonperformance by any other party to an agreement; and (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth or solvency of the primary obligor, (iv) to purchase Property or services for the purpose of assuring the ability of the primary obligor to perform a primary obligation, or (v) otherwise to assure or hold harmless the holder of any primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

Contractual Obligation as applied to any Person, any provision of any security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

Cost the calculated cost of purchases, based on GAAP, which practices are in effect on the date on which this Agreement was executed as such calculated cost is determined from: invoices received by the Borrowers, Henry U.S. or Mayor s Florida, as applicable; the Borrowers purchase journal; or the Borrowers stock ledger. Cost does not include inventory capitalization costs or other non purchase price charges used in the Borrowers calculation of cost of goods sold but does include Freight Taxes and Duties. The Cost of Eligible Inventory will be determined in a manner consistent with the Borrowers then current tracking practices, based on the Borrowers stock ledger inventory.

Credit Card Agreement as defined in **Section 6.1(p)**.

Customer Credit Liability gift certificates, customer deposits, offsets, merchandise credits, layaway obligations, frequent shopping programs, and similar liabilities of the Borrowers and their Subsidiaries to their retail customers and prospective customers.

CWA the Clean Water Act (33 U.S.C. §§ 1251 et seq.).

Debt as applied to any Person, without duplication, whether or not included as indebtedness or liabilities in accordance with GAAP (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments whether or not representing obligations for borrowed money; (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers acceptances, bank guaranties, surety bonds and similar instruments; (c) net obligations of such Person under any Hedging Agreement; (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business that are not more than 90 days past due); (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; (f) Capital Leases and synthetic lease obligations; (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any equity interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and (h) all Contingent Obligations of such Person in respect of any of the foregoing. For all purposes hereof, the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Debt is expressly made non-recourse to such Person.

Default (a) an Event of Default or (b) any event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default.

Default Rate for any Obligation (including, to the extent permitted by law, interest not paid when due), 2% plus the interest rate otherwise applicable thereto.

Defaulting Lender as defined in **Section 4.2.**

Deposit Account as defined in the UCC. The term Deposit Account shall include, for the avoidance of doubt, any Concentration Account and any Dominion Account.

Deposit Account Bank any financial institution selected or approved by the Administrative Agent in its sole discretion exercised reasonably.

Deposit Account Control Agreement a letter agreement, in form and substance reasonably acceptable to the Applicable Agent, executed by the relevant Loan Party, the Applicable Agent, the relevant Deposit Account Bank and any other party thereto (if any).

Document as defined in the UCC.

Documentary Letter of Credit Fee as defined in **Section 3.2.2**.

Dollar Equivalent of any amount means, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount and (b) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent using the published spot rate as quoted by Bank of America or its branches or Affiliates to customers generally as its noon spot rate at which such currency is offered on such day for Dollars.

Dollars or $ lawful money of the United States.

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

Dominion Account a Deposit Account subject to a Deposit Account Control Agreement.

Eligible Assignee a Person that is (a) a Lender, an Affiliate of a Lender or Approved Fund; (b) any other financial institution approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) and, so long as no Event of Default has occurred and is continuing, (x) with respect to assignments of the US Revolver Commitments or the Tranche A-1 Commitments, the US Borrower and (y) with respect to assignments of the Canadian Revolver Commitments, the Canadian Borrower (which approval by such Borrower shall not be unreasonably withheld or delayed); and (c) during any Event of Default, any Person acceptable to the Administrative Agent in its discretion; provided that notwithstanding the foregoing, Eligible Assignee shall not include (i) any Loan Party or any Affiliate or Subsidiary of any Loan Party or (ii) a natural person. It is acknowledged and understood that either (i) the Administrative Agent or (ii) so long as no Event of Default has occurred and is continuing, the Canadian Borrower may, in its discretion, decline to give its approval to any Person as an assignee of any Canadian Lender if such Person is not a Canadian Qualified Lender.

Eligible Inventory all Inventory of the Borrowers, Henry U.S. and Mayor s Florida consisting of finished goods, work in progress and raw materials and component parts of Inventory, in all cases, at such locations, and of such types, character, qualities and quantities, as the Administrative Agent in its reasonable discretion from time to time determines to be acceptable for borrowing, as to which Inventory, the Applicable Agent has a perfected security interest which is prior and superior to all security interests, claims, and Liens.

Eligible Inventory Category in respect of any Borrower, Henry U.S. or Mayor s Florida, the categories of Eligible Inventory set forth below or such other categories as may be determined by the Agents from time to time in their reasonable discretion:

US Borrower, Henry U.S. and Mayor s Florida	**Canadian Borrower**
Eligible Inventory Category	**Eligible Inventory Category**
Basic Diamonds	Watches and Clocks
Fashion Diamonds	Fine Jewelry
Colored Stones	Bridal
Pearls	Giftware
Gold Jewelry	Loose Stones
Estate Jewelry	Silver
Rolex Watches	Gold
Cartier Watches	Service
Other Watches	
Giftware	
Loose Stones	
Parts	

Eligible Major Credit Card Receivables Accounts due to a Borrower, Henry U.S. or Mayor s Florida on a non-recourse basis from Visa, Mastercard, American Express Co., Discovercard, Citibank,N.A., Wells Fargo (Canada), and VFC Inc. (a wholly owned subsidiary of TD Bank) and other major credit card processors reasonably acceptable to the Administrative Agent, as arise in the ordinary course of business and which have been earned by performance. Without limiting the foregoing, none of the following shall be deemed to be Eligible Credit Card Receivables:

(a) Accounts that have been outstanding for more than five (5) Business Days from the date of sale;

(b) Accounts with respect to which a Borrower, Henry U.S. or Mayor s Florida, as applicable, does not have good, valid and marketable title thereto, free and clear of any Lien (other than Permitted Liens);

(c) Accounts that are not subject to a first priority Lien in favor of the Administrative Agent or the Canadian Agent, as applicable, for its benefit and the ratable benefit of the Secured Parties;

(d) Accounts 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) Except as approved by the Agents, Accounts due from major credit card processors as to which the credit card processor has the right under certain circumstances to require a Borrower, Henry U.S. or Mayor s Florida, as applicable, to repurchase the Accounts from such credit card processor but only to the extent of any such repurchase obligation;

(f) Accounts due from major credit card processors (other than Visa, Mastercard, American Express Co. and Discovercard) which the Administrative Agent determines in its commercially reasonable discretion acting in good faith to be unlikely to be collected; or

(g) Accounts due from major credit card processors as to which the credit card processor has not entered into a Credit Card Agreement or refused to accept a credit card notification letter from the applicable Agent.

Eligible Private Label and Corporate Accounts Accounts due on the private label credit card programs and all Accounts due from corporate sales receivables and wholesale receivables, in each case, of the Borrowers, Henry U.S. and Mayor s Florida, in each case, which are deemed in the reasonable discretion of the Administrative Agent to be eligible. The Administrative Agent shall act in good faith at all times when determining such eligibility.

Employee Benefit Plan any employee benefit plan within the meaning of §3(3) of ERISA maintained or contributed to by the Borrowers or any ERISA Affiliate, other than a Guaranteed Pension Plan or a Multiemployer Plan.

Enforcement Action any rightful action to enforce any Obligations or Loan Documents or to realize upon any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, or otherwise).

Environmental Agreement each agreement of the Loan Parties with respect to any Real Estate subject to a Mortgage, pursuant to which the Loan Parties agree to indemnify and hold harmless the Agents and the Lenders from liability under any Environmental Laws, except for liability caused by any actions of Agents or the Lenders which are in violation of the Environmental Laws.

Environmental Laws all Applicable Laws (including all programs, permits and guidance promulgated by regulatory agencies), relating to public health (but excluding occupational safety and health, to the extent regulated by OSHA) or the protection or pollution of the environment, including CERCLA, RCRA and CWA.

Environmental Notice a notice (whether written or oral) from any Governmental Authority or other Person of any possible noncompliance with, investigation of a possible violation of, litigation relating to, or potential fine or liability under any Environmental Law, or with respect to any Environmental Release, environmental pollution or hazardous materials, including any complaint, summons, citation, order, claim, demand or request for correction, remediation or otherwise.

Environmental Release a release as defined in CERCLA or under any other Environmental Law.

Equipment as defined in the UCC, including all machinery, apparatus, equipment, fittings, furniture, fixtures, motor vehicles and other tangible personal Property (other than Inventory), and all parts, accessories and special tools therefor, and accessions thereto and, in any event, including all such Person s machinery and equipment, including processing equipment, conveyors, machine tools, data processing and computer equipment including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture, materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of real property, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto, and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto.

ERISA the Employee Retirement Income Security Act of 1974, as amended and in effect from time to time.

ERISA Affiliate any Person which is treated as a single employer with the Borrowers under §414(b), (c), (m) and (o) of the Code.

ERISA Reportable Event a reportable event with respect to a Guaranteed Pension Plan within the meaning of §4043 of ERISA and the regulations promulgated thereunder.

Event of Default as defined in **Section 11**.

Excluded Taxes taxes, levies, imposts, deductions, charges or withholdings, including interest, penalties or additions thereto, and all related liabilities, imposed on or measured by net income or net profits of the relevant Lender or Agent, capital taxes or franchise taxes imposed pursuant to the laws of Canada (including any province or territory thereof), the United States of America or by the jurisdiction under the laws of which the Lender or Agent is organized, in which such person is resident for tax purposes or in which the principal office or applicable lending office of such Lender or Agent is located or in which it is otherwise deemed to be engaged in a trade or business for tax purposes or any subdivision thereof or therein, and any branch profits taxes imposed by the United States of America or any similar tax imposed by any jurisdiction on any Lender or Agent.

Exempt Deposit Accounts a depository account maintained by any of the Borrowers, the only contents of which may be transfers from its operating account and actually used solely (a) for petty cash purposes; or (b) for payroll, payroll Taxes and deductions and other employee wages and benefit payments to or for the benefit of the Borrowers salaried and hourly employees.

Existing Credit Agreement as defined in the preamble hereto.

Existing Lenders as defined in the preamble hereto.

Existing Letters of Credit those Letters of Credit issued by Bank of America and described on **Schedule 2.3.1**.

Extraordinary Expenses all reasonable costs, expenses or advances that any Agent or any Lender may incur, whether prior to or during an Insolvency Proceeding of a Loan Party, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or

realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against any Agent, any Lender, any Loan Party, any representative of creditors of a Loan Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of any Agent s Liens with respect to any Collateral), Loan Documents or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of any Agent or any Lender in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any amendment, modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations; or (g) Protective Advances. Such costs, expenses and advances include transfer fees, taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers fees and commissions, auctioneers fees and commissions, accountants fees, environmental study fees, wages and salaries paid to employees of any Loan Party or independent contractors in liquidating any Collateral, and travel expenses.

Federal Funds Rate for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of $^{1}/_{100}$ of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

Fee Letter the fee letter agreement dated as of the Closing Date between the Administrative Agent, the Arranger, and the Borrowers.

Fiscal Quarter each of the three month periods ending on the last Saturday of each of March, June, September and December of any year.

Fiscal Year the twelve month period ending on the last Saturday of March of any year.

Fixed Charge Coverage Ratio as at any date of determination, the ratio of (a) Consolidated EBITDA for the period of four consecutive Fiscal Quarters ending on such date, minus payments made in cash during such period in respect of Capital Expenditures incurred during such period or any previous period (other than that portion of such Capital Expenditures financed by lenders other than the Lenders hereunder), minus income taxes paid in cash with respect to such period to (b) Consolidated Fixed Charges for such period.

Fixtures as such term is defined in the UCC, now owned or hereafter acquired by any Loan Party located at a parcel of Real Estate subject to a Mortgage.

FLSA the Fair Labor Standards Act of 1938.

Foreign Lender with respect to any Borrower, a Lender to such Borrower that is organized under the laws of a jurisdiction other than (i) a state of the United States or the District of Columbia, in the case of the US Borrower, or (ii) Canada or a province or territory thereof, or is otherwise not a Canadian Qualified Lender, in the case of the Canadian Borrower.

Freight Taxes and Duties freight, Taxes and duties included in Inventory in accordance with GAAP.

FSCO the Financial Services Commission of Ontario and any Person succeeding to the functions thereof and includes the Superintendent under such statute and any other Governmental Authority empowered or created by the *Supplemental Pension Plans Act* (Québec) or the *Pension Benefits Act* (Ontario) or any Governmental Authority of any other Canadian jurisdiction exercising similar functions in respect of any Canadian Plan of any Loan Party or any Subsidiary or Affiliate of a Loan Party and any Governmental Authority succeeding to the functions thereof.

Full Payment with respect to any Obligations, (a) the full and indefeasible cash payment thereof, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); (b) if such Obligations are US LC Obligations, Canadian LC Obligations or inchoate or contingent in nature, Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to the Applicable Agent in its discretion, in the amount of required Cash Collateral); and (c) a release of any Claims of the Loan Parties against the Agents, the Lenders and the Issuing Banks arising on or before the payment date. No Loans shall be deemed to have been paid in full until all Commitments related to such Loans have expired or been terminated.

GAAP generally accepted accounting principles in the United States in effect from time to time.

General Intangibles as defined in the UCC, including choses in action, causes of action, company or other business records, inventions, blueprints, designs, patents, patent applications, trademarks, trademark applications, trade names, trade secrets, service marks, goodwill, brand names, copyrights, registrations, licenses, franchises, customer lists, permits, tax refund claims, computer programs, operational manuals, internet addresses and domain names, insurance refunds and premium rebates, all rights to indemnification, and all other intangible Property of any kind.

General Security Agreement the Amended and Restated General Security Agreement by each Loan Party in favor of the Canadian Agent, for the benefit of the Secured Parties.

Goods as defined in the UCC.

Governmental Approvals all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

Governmental Authority any federal, state, provincial, territorial, municipal, foreign or other governmental department, agency, commission, board, bureau, court, tribunal, instrumentality, political subdivision, or other entity or officer exercising executive, legislative, judicial, regulatory or administrative functions for or pertaining to any government or court, in each case whether associated with the United States, a state, district or territory thereof, Canada, a province or territory thereof, or a foreign entity or government.

Guaranteed Canadian Obligations as defined in **Section 7.7.1(b)**.

Guaranteed Obligations collectively, the Guaranteed Canadian Obligations and the Guaranteed US Obligations.

Guaranteed Pension Plan any employee pension benefit plan within the meaning of §3(2) of ERISA maintained or contributed to by the Borrowers or any ERISA Affiliate the benefits of which are guaranteed on termination in full or in part by the PBGC pursuant to Title IV of ERISA, other than a Multiemployer Plan.

Guaranteed US Obligations as defined in **Section 7.7.1(a)**.

Guarantors each Borrower as set forth in **Section 7.7** and each Subsidiary of a Borrower that has executed a Guaranty.

Guaranty collectively, each guaranty of all or any portion of the Obligations executed by a Guarantor.

Hedging Agreement an agreement relating to any swap, cap, floor, collar, option, forward, cross right or obligation, or combination thereof or similar transaction, with respect to interest rate, foreign exchange, currency, commodity, credit or equity risk.

Henry U.S. Henry Birks & Sons U.S., Inc., a Delaware corporation.

Impacted Lender any (a) Defaulting Lender, (b) Lender that has been deemed insolvent or has become subject to an Insolvency Proceeding or (c) Lender as to which (i) any Issuing Bank has a good faith belief that such Lender has defaulted in fulfilling its obligations under one or more other syndicated credit facilities or (ii) an entity that Controls the Lender has been deemed insolvent or has become subject to an Insolvency Proceeding. For purposes of this definition, Control means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a Person, whether through ownership of equity interests, by contract or otherwise.

Indemnitees the Agent Indemnitees, Lender Indemnitees, the Issuing Bank Indemnitees and Bank of America Indemnitees.

Insolvency Proceeding any case or proceeding commenced by or against a Person under any state, provincial, territorial, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, any Canadian Debtor Relief Law, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, interim receiver, trustee, liquidator, administrator, conservator, monitor or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

Instrument as defined in the UCC.

Intellectual Property all intellectual and similar Property of a Person, including inventions, designs, patents, patent applications, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, registrations and franchises; all books and records describing or used in connection with the foregoing; and all licenses or other rights to use any of the foregoing.

Intellectual Property Claim any claim or assertion (whether in writing, by suit or otherwise) that any Loan Party s or any Subsidiary s ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person s Intellectual Property.

Intercompany Debt unsecured Debt of a Loan Party owing to another Loan Party; provided that (i) all such Debt shall be evidenced by promissory notes and all such notes shall be subject to a Lien in favor of the Applicable Agent pursuant to the Security Documents, (ii) all such Debt shall be unsecured and subordinated in right of payment to the Full Payment of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement that in each such case, is satisfactory to the Administrative Agent, and (iii) any payment by any such Loan Party to any other Loan Party under any guaranty of the Obligations or otherwise shall result in a *pro tanto* reduction of the amount of any Debt owed by such Loan Party to any such Loan Party for whose benefit such payment is made.

Intercreditor Agreement the Intercreditor Agreement dated as of the Closing Date, by and among the Agents and the Term Loan Agent, and acknowledged by Loan Party, as it may be amended, supplemented or otherwise modified from time to time.

Interest Period as defined in **Section 3.1.3**.

Inventory as defined in the UCC, including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in such Person s business (but excluding Equipment).

Inventory Reserves such reserves as may be established from time to time by the Administrative Agent in the Administrative Agent s reasonable discretion with respect to the determination of shrink, the saleability, at retail, of the Eligible Inventory, decreases in cumulative mark-ups from historical or industry norms, or which reflect such other factors as affect the market value of the Eligible Inventory.

Investment any (a) acquisition of all or substantially all assets of, or any line of business or division of, a Person; (b) acquisition of record or beneficial ownership of any Capital Stock of a Person; (c) loan, advance or capital contribution to, guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guarantees Debt of such other Person, or (d) other investment in a Person.

Investment Property as defined in the UCC.

Issuing Bank with respect to (a) the US Borrower, Bank of America in its capacity as issuer of Letters of Credit for the account or benefit of the US Borrower hereunder, (b) the Canadian Borrower, Bank of America-Canada Branch, in its capacity as issuer of Letters of Credit for the account or benefit of the Canadian Borrower hereunder or, in each case, any permitted successor issuer of Letters of Credit hereunder and (c) such other financial institution designated in writing by the Administrative Agent in its reasonable discretion to issue one or more Letters of Credit hereunder for the Borrowers account.

Issuing Bank Indemnitees the Issuing Banks and their officers, directors, employees, Affiliates, agents, advisors and attorneys.

ITA *Income Tax Act* (Canada), as the same may be amended from time to time, and any regulation promulgated thereunder.

Joint Venture a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided that in no event shall any Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

LC Application an application by a Borrower to an Issuing Bank for issuance of a Letter of Credit, in form and substance reasonably satisfactory to such Issuing Bank.

LC Documents all documents, instruments and agreements (including LC Requests and LC Applications) delivered by the Borrowers or any other Person to an Issuing Bank or Agents in connection with issuance, amendment or renewal of, or payment under, any Letter of Credit.

LC Guaranty a guaranty issued by an Issuing Bank to another Person in connection with the issuance by such other Person of Letters of Credit hereunder.

LC Request a request for issuance of a Letter of Credit, to be provided by a Borrower to an Issuing Bank, in form reasonably satisfactory to the Applicable Agent and such Issuing Bank.

Leasing Obligations all obligations of the Loan Parties to the Secured Parties and any of their Affiliates or branches under a leasing arrangement for furniture, fixtures and equipment.

Lender Indemnitees the Lenders and their officers, directors, employees, Affiliates, branches, agents, advisors and attorneys.

Lenders as defined in the preamble to this Agreement, including the US Lenders, the Tranche A-1 Lenders, the Canadian Lenders, each Agent in its capacity as a provider of Swingline Loans, the Issuing Banks (unless the context otherwise requires) and any other Person who hereafter becomes a Lender pursuant to the terms hereof. For the purposes of the Other Agreements and the Security Documents, Lenders means and is deemed to include the Secured Parties.

Letter of Credit any standby or documentary letter of credit (including the Existing Letters of Credit) issued by an Issuing Bank for the account or benefit of a Borrower, or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by the Applicable Agent or an Issuing Bank for the benefit of a Borrower.

Letter of Credit Fees collectively, the Documentary Letter of Credit Fees and the Standby Letter of Credit Fees.

Letter-of-Credit Right as defined in the UCC.

Letter of Credit Subline $30,000,000.

LIBOR Loan each set of LIBOR Revolver Loans or LIBOR Tranche A-1 Loans having a common length and commencement of Interest Period.

LIBOR Revolver Loan a Revolver Loan that bears interest at Adjusted LIBOR.

LIBOR Tranche A-1 Loan a Tranche A-1 Loan that bears interest at Adjusted LIBOR.

License any license or agreement under which a Loan Party is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Licensor any Person from whom a Loan Party obtains the right to use any Intellectual Property.

Lien any Person s interest in Property securing an obligation owed to, or a claim by, such Person, whether such interest is based on common law, statute or contract, including liens, security interests, pledges, hypothecations, prior claims, rights of retention, statutory trusts, deemed trusts, reservations, exceptions, encroachments, easements, servitudes, rights-of-way, covenants, conditions, restrictions, leases, leasings, conditional sales and other title exceptions and encumbrances affecting Property.

Lien Priority Agreement an agreement, in form and substance reasonably satisfactory to the Applicable Agent, in respect of any Collateral located in the province of Québec, Canada on premises owned by a Person that is not a Loan Party (the Owner), to which a Loan Party has granted a hypothec to the Owner, which agreement shall provide, without limitation, that the Owner waives or subordinates or cedes priority of preference and rank in any Lien it may have on any part of the Collateral in favor of the Applicable Agent.

Lien Waiver an agreement, in form and substance reasonably satisfactory to the Applicable Agent, by which (a) for any Collateral located on a leased or mortgaged premises, the lessor or mortgagee waives or subordinates any Lien it may have on the Collateral, and agrees to permit such Agent to gain access to and enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for the Applicable Agent, agrees to permit such Agent to gain access to and enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral and/or agrees to deliver the Collateral to such Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges the Applicable Agent s Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to such Agent upon request; and (d) for any Collateral subject to a Licensor s Intellectual Property rights, the Licensor grants to the Applicable Agent the right, vis-à-vis such Licensor, to enforce such Agent s Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License, in each case, to the extent permitted by Applicable Law.

Loan a US Revolver Loan, Tranche A-1 Loan or a Canadian Revolver Loan.

Loan Account the loan account established by each Lender on its books pursuant to **Section 5.7**.

Loan Documents this Agreement, the Other Agreements and the Security Documents.

Loan Party each Borrower and each Guarantor.

Loan to Value Reserve as of the date of determination by the Administrative Agent, from time to time an amount equal to the greater of (i) $0; and (ii) the amount, if any, by which the outstanding amount of the Term Loans at such time exceeds the Dollar Equivalent of 10% of the Appraised Inventory Liquidation Value of each Eligible Inventory Category owned by the Borrowers, Henry U.S. and Mayor s Florida at such time.

Management Agreement that certain Management Consulting Services Agreement, dated as of April 1, 2006, between the Canadian Borrower and Iniziativa S.A., as amended by the First Amendment to the Management Consulting Agreement, dated as of December 5, 2006, between the Canadian Borrower and Iniziativa S.A., as assigned by Iniziativa S.A. to Montrovest B.V. pursuant to that certain Assignment and Assumption Agreement, dated as of October 29, 2007, among Iniziativa S.A., Montrovest B.V. and the Canadian Borrower, as further amended by the extension letter agreements dated as of September 15, 2008 and dated November 14, 2008 and as may be further amended from time to time in accordance with the terms hereof and the Management Subordination Agreement.

Management Debt collectively, the management fees, out-of-pocket disbursements, all indemnification expenses, any success fees (including, without limitation, the Success Fee as defined under the Management Subordination Agreement) and all other obligations of the Borrowers to Montrovest B.V. pursuant to the Management Agreement.

Management Subordination Agreement that certain Management Subordination Agreement dated as of the Closing Date among the Canadian Borrower, Montrovest B.V., the Canadian Agent and the Term Loan Agent.

Margin Stock as defined in Regulation U of the Board of Governors.

Material Adverse Effect the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, has or could be reasonably expected to have a material adverse effect on: (a) the business, operations, liabilities (actual or contingent), Properties, or condition (financial or otherwise) of the Loan Parties considered as a whole, or the value of the Collateral, taken as a whole, the enforceability of any Loan Documents, or on the validity or priority of the Applicable Agent s Liens on any Collateral; (b) the ability of the Loan Parties taken as a whole to perform any obligations under the Loan Documents, including repayment of any Obligations; (c) the rights and remedies of the Agents or the Lenders under the Loan Documents or the ability of any Agent or any Lender to enforce or collect the Obligations or to realize upon the Collateral or (d) the legality, validity, binding effect or enforceability of any Loan Document against any Loan Parties which is a party to such Loan Document.

Material Contract any agreement or arrangement to which any Loan Party or any of its Subsidiaries is party (other than the Loan Documents) (a) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect or (b) that relates to Debt in an aggregate amount of the Dollar Equivalent of $2,500,000 or more. Notwithstanding anything to the contrary contained in this Agreement, the term Material Contract shall include, for all purposes, each of the following: (i) the Term Loan Documents (and any refinancings, renewals or extensions thereof), (ii) the Brinkhaus Subordinated Debt Documents, (iii) the Quebec Subordinated Debt Documents, (iv) the Rhode Island Debt Documents, and (v) the Rolex Documents.

Mayor s Mayor s Jewelers, Inc., a Delaware corporation.

Mayor s Florida Mayor s Jewelers of Florida, Inc., a Florida corporation.

Moody s Moody s Investors Service, Inc., and its successors.

Mortgage each mortgage, deed of trust, deed of hypothec, or deed to secure debt pursuant to which a Loan Party grants to the Applicable Agent, for the benefit of the Secured Parties, Liens upon the Real Estate interests (fee, leasehold or otherwise) then held by any Loan Party, as security for the Obligations.

Multiemployer Plan any multiemployer plan within the meaning of §3(37) of ERISA maintained or contributed to by the Borrowers or any ERISA Affiliate and subject to Title IV of ERISA.

Non-Canadian Loan Party any Loan Party that is not a Canadian Loan Party.

Non-Extension Notice Date as defined in **Section 2.3.1(g)**.

Non-Material Subsidiaries collectively, Jan Bell Marketing Puerto Rico, Inc., a corporation organized in the Commonwealth of Puerto Rico, Exclusive Diamonds International, Ltd., an Israeli company, and Regal Diamonds International (T.A.) Ltd., an Israeli company.

Non-Reinstatement Deadline as defined in **Section 2.3.1(h)**.

Notes each US Revolver Note, Tranche A-1 Note, Canadian Revolver Note or other promissory note executed by a Borrower to evidence any Obligations.

Notice of Borrowing a Notice of Borrowing to be provided by a Borrower to request the funding of a Borrowing of Loans, in form reasonably satisfactory to the Applicable Agent.

Notice of Conversion/Continuation a Notice of Conversion/Continuation to be provided by a Borrower to request a conversion or continuation of any Loans as LIBOR Loans or Canadian BA Rate Loans, as applicable, in form satisfactory to the Applicable Agent.

Obligations all (a) principal of and premium, if any, on the Loans, (b) US LC Obligations, Canadian LC Obligations and other obligations of the Loan Parties with respect to Letters of Credit, (c) interest, expenses, fees and other sums payable by the Loan Parties under the Loan Documents, (d) obligations of the Loan Parties under any indemnity for Claims, (e) Extraordinary Expenses, (f) Bank Product Debt, and (g) other Debts, obligations and liabilities of any kind owing by the Loan Parties pursuant to the Loan Documents, in each case, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether or not allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several.

Ordinary Course of Business the ordinary course of business of the Borrowers, the Guarantors or any of their Subsidiaries, consistent with past practices and undertaken in good faith.

Organizational Documents with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation, organization or operation of such Person.

OSHA the Occupational Safety and Hazard Act of 1970.

Other Agreements each Note, LC Document, LC Guaranty, Fee Letter, Intercreditor Agreement, Subordination Agreement, Related Real Estate Document, Borrowing Base Certificate, Compliance Certificate, Post-Closing Agreement, financial statement or report delivered hereunder, together with each other document, instrument or agreement (other than this Agreement or a Security Document) now or hereafter delivered by a Loan Party or other Person to an Agent or a Lender in connection with any transactions relating hereto.

Overadvance Loan a (a) Base Rate Revolver Loan made to the US Borrower, or the issuance, extension or amendment of a Letter of Credit to the US Borrower, when a US Revolver Overadvance exists or is caused by such credit extension or (b) Canadian Prime Rate Loan or Base Rate Revolver Loan made to the Canadian Borrower, or the issuance, extension or amendment of a Letter of Credit to the Canadian Borrower, when a Canadian Revolver Overadvance exists or is caused by such credit extension

Participant as defined in **Section 13.5**.

Patriot Act the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Patent Security Agreement the Patent Collateral Assignment and Security Agreement among the Loan Parties and the Administrative Agent.

Payment Intangible as defined in the UCC.

Payment Item cash, each check, draft, credit card slip, receipt, note, instrument and any other item of payment payable to a Borrower, including those constituting proceeds of any Collateral.

PBGC the Pension Benefit Guaranty Corporation created by Section 4002 of ERISA and any successor entity or entities having similar responsibilities.

Pension Funding Rules the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Guaranteed Pension Plans and set forth in, with respect to plan years ending prior to the effective date as to such Guaranteed Pension Plan of the Pension Protection Act of 2006, §412 of the Code and §302 of ERISA each as in effect prior to the Pension Protection Act of 2006 and, thereafter, §412 and §430 of the Code and §302 and §303 of ERISA.

Permitted Lien as defined in **Section 10.2.2**.

Permitted Store Closings commencing January 1, 2009, the closing of three (3) retail locations of the Loan Parties in the aggregate in any calendar year.

Person any individual, corporation, limited or unlimited liability company, partnership, joint venture, joint stock company, land trust, business trust, unincorporated organization, Governmental Authority or other entity.

Post-Closing Agreement that certain Post-Closing Agreement dated as of the Closing Date and entered into by and among the Loan Parties and the Agents, in form, scope and substance satisfactory to the Administrative Agent.

PPSA the *Personal Property Security Act* of Ontario (or any successor statute) or similar legislation of any other Canadian jurisdiction, including, without limitation, the Civil Code of Québec, the laws of which are required by such legislation to be applied in connection with the issue, perfection, enforcement, opposability, enforceability, validity or effect of security interests or hypothecs.

Private Label Accounts Accounts due on the Borrowers private label credit card programs.

Properly Contested with respect to any obligation of any Loan Party, (a) the obligation is subject to a bona fide dispute regarding amount or such Loan Party s liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d); no Lien is imposed on assets of such Loan Party, unless bonded and stayed to the satisfaction of Agents; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

Property any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

Pro Rata (a) with respect to any US Lender, a percentage (expressed as a decimal, rounded to the fourth decimal place) determined (i) while the US Revolver Commitments are outstanding, by dividing the amount of such US Lender s US Revolver Commitment by the aggregate amount of all US Revolver Commitments; and (ii) at any other time, by dividing the amount of such US Lender s US Revolver Loans and US LC Obligations by the aggregate amount of all outstanding US Revolver Loans and US LC Obligations, (b) with respect to any Tranche A-1 Lender, a percentage (expressed as a decimal, rounded to the fourth decimal place) determined (i) while the Tranche A-1 Commitments are outstanding, by dividing the amount of such Tranche A-1 Lender s Tranche A-1 Commitment by the aggregate amount of all Tranche A-1 Commitments; and (ii) at any other time, by dividing the amount of such Tranche A-1 Lender s Tranche A-1 Loans by the aggregate amount of all outstanding Tranche A-1 Loans and (c) with respect to any Canadian Lender, a percentage (expressed as a decimal, rounded to the fourth decimal place) determined (i) while the Canadian Revolver Commitments are outstanding, by dividing the amount of such Canadian Lender s Canadian Revolver Commitment by the aggregate amount of all Canadian Revolver Commitments; and (ii) at any other time, by dividing the amount of such Canadian Lender s Canadian Revolver Loans and Canadian LC Obligations by the aggregate amount of all outstanding Canadian Revolver Loans and Canadian LC Obligations.

Protective Advances as defined in **Section 2.1.4**.

Quebec Existing Subordinated Debt all Debt owing to Investissement Québec (successor in interest to La Financière du Québec by virtue of decree 315-2004) under the Quebec Existing Subordinated Debt Documents in the original maximum

principal amount of Cdn. $4,500,000, of which a balance in the aggregate principal amount not to exceed Cdn. $800,000 remains outstanding as of the Closing Date, and subject to the Quebec Subordination Agreements.

Quebec Existing Subordinated Debt Documents that certain *Offre de Prêt* (Loan Offer) made by La Financière du Québec (now known as Investissement Québec) on February 7, 2003, and accepted by the Canadian Borrower on February 18, 2003, in respect of a term loan in the original maximum principal amount of Cdn. $4,500,000, and all security and other accessory documents or instruments thereto at any time, and subject at all times to the Quebec Subordination Agreements.

Quebec Existing Subordination Agreement that certain Cession de Rang (Subordination) dated as of April 27, 2006, by Investissement Québec in favor of the Canadian Agent.

Quebec New Subordinated Debt all Debt owing to Investissement Québec under the Quebec New Subordinated Debt Documents in the original maximum principal amount of Cdn. $2,900,000, and subject to the Quebec Subordination Agreements.

Quebec New Subordinated Debt Documents that certain *Offre de Prêt* (Loan Offer) from Investissement Québec to the Canadian Borrower on October 6, 2008, in respect of a term loan in the original maximum principal amount of Cdn. $2,900,000, and all security and other accessory documents or instruments thereto at any time, and subject at all times to the Quebec Subordination Agreements.

Quebec Subordinated Debt collectively, (i) the Quebec Existing Subordinated Debt, (ii) the Quebec New Subordinated Debt, and (iii) all other Debt owing to Investissement Québec under the Quebec Subordinated Debt Documents, which Debt shall be expressly subordinate to Full Payment of the Obligations pursuant to the Quebec Subordination Agreements.

Quebec Subordinated Debt Documents collectively, (i) the Quebec Existing Subordinated Debt Documents, (ii) the Quebec New Subordinated Debt Documents and (iii) all other agreements, documents and instruments evidencing all or any portion of the Quebec Subordinated Debt.

Quebec Subordinated Debt Reserve the aggregate amount of the Quebec Subordinated Debt outstanding from time to time; provided, that the amount of the Quebec Subordinated Debt Reserve shall be reduced to $0 upon receipt by the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, of a Quebec Subordination Agreement substantially in the form of **Exhibit H** as to all Quebec Subordinated Debt.

Quebec Subordination Agreements collectively, (i) with respect to the Quebec Existing Subordinated Debt, as of the Closing Date, the Quebec Existing Subordination Agreement and (ii) with respect to all Quebec Subordinated Debt, the subordination agreements among Investissement Québec, the Canadian Agent, the Administrative Agent and the Term Loan Agent substantially in the form attached hereto as **Exhibit H** or such other subordination agreements in form, scope and substance satisfactory to the Agents and the Term Loan Agent and agreed to in writing by the Agents in their sole discretion.

RCRA the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

Real Estate all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon.

Register as defined in **Section 13.4**.

Reimbursement Date as defined in **Section 2.3.2**.

Related Parties with respect to any Person, such Person s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person s Affiliates.

Related Real Estate Documents with respect to any Real Estate subject to a Mortgage entered into by any Loan Party, the following, in form and substance reasonably satisfactory to the Applicable Agent and, in the case of a Mortgage entered into by any Loan Party after the date hereof, received by the Administrative Agent for review at least 15 days prior to the effective date of the Mortgage (or such shorter length of time acceptable to the Administrative Agent in its reasonable discretion): (a) a mortgagee title policy (or binder therefor) covering the Applicable Agent s interest under the Mortgage, in a form and amount and by an insurer reasonably acceptable to the Applicable Agent, which must be fully paid on such effective date; (b) such assignments of leases, rents, estoppel letters, attornment agreements, consents, waivers and releases as the Administrative Agent may require with respect to other Persons having an interest in the Real Estate; (c) if otherwise in the possession of a Loan Party, a current, as-built survey of the Real Estate, containing a metes-and-bounds property description and flood plain certification, and certified by a licensed surveyor reasonably acceptable to the Administrative Agent; (d) flood insurance in an amount, with endorsements and by an insurer reasonably acceptable to the Applicable Agent, if the Real Estate is within a flood plain; (e) a current appraisal of the Real Estate, prepared by an appraiser reasonably acceptable to the Applicable Agent; (f) a Phase I (and to the extent appropriate, Phase II) environmental assessment report, prepared by an environmental consulting firm reasonably satisfactory to the Applicable Agent, and accompanied by such reports, certificates, studies or data as the Applicable Agent may reasonably require, which shall all be in form and substance reasonably satisfactory to the Applicable Agent; and (g) an Environmental Agreement and such other documents, instruments or agreements as the Applicable Agent may reasonably require with respect to any environmental risks regarding the Real Estate.

Rent and Charges Reserve the aggregate of (a) all past due rent and other amounts owing by a Loan Party to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder or other Person who possesses any Collateral or could assert a Lien on any Collateral; (b) in the case of Inventory located at a leased premise for which a Lien Waiver has not been executed, an amount equal to up to two (2) months rent, (c) in the case of Inventory located at premises located in the province of Québec, Canada for which a Lien Waiver or Lien Priority Agreement has not been executed, an Availability Reserve reasonably determined by the Administrative Agent as its good faith estimate of claims in respect of registered hypothecs that have priority over the Lien of the Applicable Agent in any of the Collateral shall have been established with respect thereto; and (d) in the case of Inventory located, stored, used or held at the premises of a third party for which a Lien Waiver has not been executed, an amount equal to up to two (2) months rent.

Report as defined in **Section 12.2.3**.

Required Canadian Lenders as of any date, so long as there are at least two Canadian Lenders, at least two Canadian Lenders (subject to **Section 4.2**) whose aggregate Canadian Revolver Commitments constitute at least fifty-one percent (51%)

of the sum of the Canadian Revolver Commitments, and if the Canadian Revolver Commitments have been terminated, so long as there are at least two Canadian Lenders, at least two Canadian Lenders (subject to **Section 4.2**) holding at least fifty-one percent (51%) of the outstanding principal amount of the Canadian Revolver Loans and Canadian LC Obligations on such date.

Required Lenders as of any date, the Required Revolver Lenders and the Required Tranche A-1 Lenders.

Required Revolver Lenders as of any date, the Required Canadian Lenders and the Required US Lenders.

Required Tranche A-1 Lenders as of any date, so long as there are at least two Tranche A-1 Lenders, at least two Tranche A-1 Lenders (subject to **Section 4.2**) whose aggregate Tranche A-1 Commitments constitute at least fifty-one percent (51%) of the Tranche A-1 Commitments, and if the Tranche A-1 Commitments have been terminated, so long as there are at least two Tranche A-1 Lenders, at least two Tranche A-1 Lenders (subject to **Section 4.2**) holding at least fifty-one percent (51%) of the outstanding principal amount of the Tranche A-1 Loans on such date.

Required US Lenders as of any date, so long as there are at least two Required US Lenders, at least two US Lenders (subject to **Section 4.2**) whose aggregate US Revolver Commitments constitute at least fifty-one percent (51%) of the sum of the US Revolver Commitments, and if the US Revolver Commitments have been terminated, so long as there are at least two Required US Lender, at least two US Lenders (subject to **Section 4.2**) holding at least fifty-one percent (51%) of the outstanding principal amount of the US Revolver Loans and US LC Obligations on such date.

Restricted Junior Payment (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of the Borrowers or any Subsidiary now or hereafter outstanding, except a dividend payable solely in shares of that class of Capital Stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of the Borrowers or any Subsidiary now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of the Borrowers now or hereafter outstanding; (iv) any payment or prepayment of Debt by the Loan Parties or their Subsidiaries to any Non-Material Subsidiary; (v) any payment or prepayment of Debt by the Borrowers or their Subsidiaries to the Borrowers or any Subsidiary s shareholders (or other equity holders); (vi) derivatives or other transactions with any financial institution, commodities or stock exchange or clearinghouse (a Derivatives Counterparty) obligating the Borrowers or any Subsidiary to make payments to such Derivatives Counterparty as a result of any change in market value of any Capital Stock of the Borrowers or such Subsidiary; or (vii) any payments on account of management, consulting or similar fees or any success fees (including, without limitation, the Management Debt) (A) to an equity holder of any Loan Party, which equity holder owns directly or indirectly at least fifty-one percent (51%) of the Voting Stock of such Loan Party (Majority Holder), (B) is an Affiliate of any Loan Party, or (C) is an Affiliate of any Majority Holder of a Loan Party.

Revolver Commitment Increase Effective Date as defined in **Section 2.4.4**.

Revolver Excess Availability as of any date of determination, an amount equal to the lesser of (a) the sum of (i) the US Revolver Excess Availability plus (ii) the Dollar Equivalent of the Canadian Revolver Excess Availability and (b) the Total Revolver Commitments.

Revolver Lenders as of any date, any Lender that has a US Revolver Commitment or a Canadian Revolver Commitment on such date.

Revolver Loans collectively, Canadian Revolver Loans and US Revolver Loans.

Rhode Island Creditor individually and collectively, (i) Rhode Island Industrial-Recreational Building Authority, (ii) Small Business Loan Fund Corporation and (iii) ScoJen Limited Partnership.

Rhode Island Debt all Debt owing to the Rhode Island Creditor under any Rhode Island Debt Documents in an aggregate amount not to exceed at any time $1,200,000, which Debt shall be expressly subordinate to the Full Payment of the Obligations pursuant to the Rhode Island Subordination Agreement.

Rhode Island Debt Documents (i) that certain Bond Purchase Agreement dated as of March 24, 2005 by and among the Rhode Island Industrial Facilities Corporation, Rhode Island Industrial-Recreational Building Authority, Birks US, the Canadian Borrower and ScoJen Limited Partnership, (ii) that certain Loan Agreement dated as of March 24, 2005 by and between Small Business Loan Fund Corporation and Birks US, (iii) that certain Leasehold Mortgage, Security Agreement and Assignment of Leases and Rents, dated as of March 24, 2005, by and among the Rhode Island Industrial Facilities Corporation, Birks US, and Small Business Loan Fund Corporation, (iv) that certain Security Agreement dated as of March 24, 2005 by and among the Canadian Borrower, ScoJen Limited Partnership, and the Rhode Island Industrial-Recreational Building Authority, (v) that certain Security Agreement dated as of March 24, 2005, by and among Rhode Island Industrial Facilities Corporation, Birks US, ScoJen Limited Partnership, and the Rhode Island Industrial-Recreational Building Authority, (vi) that certain Mortgage Deed, Leasehold Mortgage and Security Agreement dated as of March 24, 2005, by and among Rhode Island Industrial Facilities Corporation, Birks US, ScoJen Limited Partnership, and the Rhode Island Industrial-Recreational Building Authority, (vii) that certain Lease Agreement dated as of March 24, 2005 by and between Rhode Island Industrial Facilities Corporation and Birks US, and (viii) all other agreements, documents and instruments executed in connection with or otherwise evidencing all or any portion of the Rhode Island Debt, in each case as in effect on the date hereof.

Rhode Island Subordination Agreement the Amended and Restated Security Interest Subordination Agreement among the Revolving Agent, the Canadian Revolving Agent, the Administrative Agent, and the Rhode Island Creditor substantially in the form of Exhibit I hereto or such other subordination agreements in form, scope and substance satisfactory to the Agents and the Term Loan Agent and agreed to in writing by the Agents in their sole discretion.

Rolex Collateral Collateral of any Loan Party consisting of Rolex, Tudor and Cellini watches, watchbands, parts and other accessories now or hereafter sold by Rolex Watch U.S.A., Inc. to such Loan Party, and all other new Rolex, Tudor and Cellini watches, watch bands, parts and other accessories hereinafter held by such Loan Party and all cash proceeds of any of the foregoing, including insurance proceeds (but specifically excluding accounts receivable), together with all rights and property of every kind at any time in the possession or control of Rolex Watch U.S.A., Inc., or any of its agents, or in transit to it, belonging to, for the account of, or subject to the order of such Loan Party.

Rolex Documents Collectively, (i) the Sales Agreement dated as of June 1, 2008 between Rolex Watch U.S.A., Inc. and Mayor s Florida (as amended and in effect on the Closing Date), and (ii) the Rolex Security Agreement.

Rolex Liens Liens on the Rolex Collateral in favor of Rolex Watch U.S.A., Inc. to the extent that such Liens are junior and subordinate to the Liens securing the Obligations on terms and conditions satisfactory to the Administrative Agent.

Rolex Security Agreement that certain Security Agreement dated as of July 29, 1998 between Mayor s Florida and Rolex Watch U.S.A., Inc., as amended by Amendment No. 1 to Security Agreement dated as of May 22, 2002 and as further amended by Amendment No. 2 to Security Agreement dated as of the Closing Date.

Rolex Subordination Agreement Section 9 of the Rolex Security Agreement, as affirmed by Rolex Watch U.S.A., Inc. on the Closing Date pursuant to acknowledgment letter from Rolex Watch U.S.A., Inc. and acknowledged by Mayor s Florida.

S&P Standard & Poor s Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

Sarbanes-Oxley the Sarbanes-Oxley Act of 2002.

Seasonal Availability Block as of any date of calculation during the periods set forth below, the following amounts (the Seasonal Availability Amount):

Period	Seasonal Availability Amount	
from and after December 20 of each year through and including January 20 of the immediately succeeding year	$	15,000,000.00
from and after January 21 through and including February 10 of each year	$	7,500,000.00
From and after February 11 through and including December 19 of any year	$	0

provided, that notwithstanding anything to the contrary, if an Event of Default shall have occurred at any time from and after December 20 of any year through and including February 10 of the immediately succeeding year, the Seasonal Availability Block Amount shall be the Seasonal Availability Amount in effect as of the occurrence of such Event of Default at all times for the period commencing on the occurrence of such Event of Default and continuing until such time as the Required Lenders shall have waived such Event of Default in accordance with the terms hereof.

Secured Parties the Administrative Agent, the Canadian Agent, the Issuing Banks, the Lenders and the providers of Bank Products.

Security Documents this Agreement, each Guaranty, the Trademark Assignments, the Patent Security Agreements, the Stock Pledge Agreement, the Canadian Security Documents, and the Deposit Account Control Agreements, together with all security agreements, deeds of hypothec, pledge agreements, Mortgages or other collateral security agreements, instruments or

documents (including Lien Waivers and Lien Priority Agreements) entered into or to be entered into by any Person pursuant to which such Person grants or perfects a security interest in its assets to any Agent in order to secure any of the Obligations, including, without limitation PPSA and UCC financing statements and certified statements issued by the Québec Register of Personal and Movable Real Rights, required to be executed or delivered pursuant to any Security Document.

Senior Officer the chairman of the board, president, chief executive officer, treasurer or chief financial officer of a Borrower or, if the context requires, a Loan Party.

Settlement Report a report delivered by the Administrative Agent to the Lenders summarizing the Loans and participations in US LC Obligations and Canadian LC Obligations outstanding as of a given settlement date, allocated to the Lenders on a Pro Rata basis in accordance with their Commitments under the relevant facilities.

Software as defined in the UCC.

Solidary Claim as defined in **Section 12.1.1(c)**.

Solvent as to any Person, such Person (a) owns Property whose Fair Salable Value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present Fair Salable Value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not insolvent within the meaning of Section 101(32) of the Bankruptcy Code (or, with respect to the Canadian Borrower or any Canadian Guarantor, is not an insolvent person within the meaning of the Bankruptcy and Insolvency Act (Canada)); and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. Fair Salable Value means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

Standby Letter of Credit Fee as defined in **Section 3.2.2**.

Stock Pledge Agreement collectively, (i) the Amended and Restated Stock Pledge Agreement among the US Borrower, certain of the Guarantors and the Administrative Agent and (ii) the Pledge Agreement between the Canadian Borrower and the Administrative Agent.

Subordinated Debt collectively, the Brinkhaus Subordinated Debt, the Management Debt, the Quebec Subordinated Debt and the Rhode Island Debt.

Subordination Agreements collectively, the Management Subordination Agreement, the Brinkhaus Subordination Agreement, the Quebec Subordination Agreement(s), the Rhode Island Subordination Agreement and the Rolex Subordination Agreement.

Subsidiary of a Person means a corporation, partnership, joint venture, limited or unlimited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a Subsidiary or to Subsidiaries shall refer to any Subsidiary or Subsidiaries of any Borrower.

Supporting Obligation as defined in the UCC.

Swingline Lender with respect to (a) US Revolver Loans, the Administrative Agent as provider of Swingline Loans and (b) Canadian Revolver Loans, the Canadian Agent as provider of Swingline Loans.

Swingline Loan any Borrowing (a) by the US Borrower of Base Rate Revolver Loans funded with the Administrative Agent s funds, until such Borrowing is settled among the US Lenders pursuant to **Section 4.1.3** and (b) by the Canadian Borrower of Base Rate Revolver Loans or Canadian Prime Rate Loans funded with the Canadian Agent s funds, until such Borrowing is settled among the Canadian Lenders pursuant to **Section 4.1.3**.

Swingline Loan Subline $10,000,000.

Taxes any taxes, levies, imposts, duties, fees, assessments, deductions, withholdings or other charges of whatever nature, including income, receipts, excise, property, sales, goods and services, use, transfer, license, payroll, withholding, social security, franchise, intangibles, mortgage, documentary, stamp or recording taxes imposed by any Governmental Authority, and all interest, penalties and similar liabilities relating thereto. For greater certainty, Taxes shall include all Taxes imposed pursuant to Part XIII of the ITA or any successor provisions thereto.

Term Loan the term loan provided to the US Borrower by the Term Loan Lenders under the Term Loan Documents.

Term Loan Agent GB Merchant Partners, LLC.

Term Loan Agreement the Term Loan and Security Agreement dated as of the Closing Date by and among the Loan Parties, the Term Loan Lenders and the Term Loan Agent, as amended pursuant to the terms of the Intercreditor Agreement.

Term Loan Borrowing Capacity at any time, an amount equal to the sum of (i) 102% of the Appraised Inventory Liquidation Value of each Eligible Inventory Category; plus (ii) 92% of the Appraised A/R Liquidation Value of Eligible Private Label and Corporate Accounts; plus (iii) 92% of the Eligible Major Credit Card Receivables; minus (and without any duplication of Availability Reserves imposed hereunder) the sum of (A) the Availability Reserves, (B) the Availability Block, (C) the Seasonal Availability Block, (D) the Brinkhaus Reserve, (E) the Quebec Subordinated Debt Reserve and (F) the Term Loan Discretionary Reserve.

Term Loan Debt all Debt owing to the Term Loan Lenders under the Term Loan Documents.

Term Loan Discretionary Reserve an availability reserve in an amount not to exceed five percent (5%) of the Term Loan Borrowing Capacity imposed by the Administrative Agent at the written direction of the Term Loan Agent, which reserve is deemed appropriate in the Term Loan Agent s reasonable discretion (without limiting the generality of this definition, including any such reserve that (x) ensures that the Loan Parties maintain adequate liquidity for the operation of their business, (y) covers any deterioration in the amount or value of the Collateral and (z) reflects impediments to the Term Loan Agent s ability to realize upon the Collateral, shall, in each case, be deemed to be a reasonable exercise of the Term Loan Agent s discretion), upon one Business Day s prior written notice from the Term Loan Agent to the Administrative Agent. Any such written direction letter shall identify the amount of the Term Loan Discretionary Reserve to be imposed, reference the Intercreditor Agreement and indicate that it is a Term Loan Discretionary Reserve Direction Notice .

Term Loan Documents the Loan Documents under and as defined in the Term Loan Agreement.

Term Loan Lenders the agents and the lenders under the Term Loan Agreement and the other Term Loan Documents.

Termination Date December 17, 2011.

Total Canadian Revolver Outstandings an amount equal to the sum of the Canadian Dollar Equivalent of (a) the principal balance of all Canadian Revolver Loans plus (b) the Canadian LC Obligations.

Total LC Obligations an amount equal to the sum of (a) the Dollar Equivalent of the Canadian LC Obligations plus (b) the US LC Obligations.

Total Revolver Commitments as of the Closing Date, $124,000,000, which amount may be increased or decreased pursuant to the terms hereof. The US Revolver Commitments and the Canadian Revolver Commitments are sublimits of the Total Revolver Commitments and not additive to the Total Revolver Commitments.

Total Revolver Outstandings an amount equal to the sum of (a) the Dollar Equivalent of the Total Canadian Revolver Outstandings plus (b) the Total US Revolver Outstandings.

Total US Revolver Outstandings an amount equal to the sum of (a) the principal balance of all US Revolver Loans plus (b) the US LC Obligations.

Trademark Assignments the several Amended and Restated Trademark Collateral Security and Pledge Agreement made by the Borrowers and their Subsidiaries in favor of the Applicable Agent and the Assignments of Trademarks and Service Marks executed in connection therewith, all in form and substance satisfactory to the Applicable Lenders and the Applicable Agent.

Tranche A-1 Borrowing Capacity on any date of determination, an amount equal to the lesser of (a) the aggregate amount of the Tranche A-1 Commitments and (b) the Dollar Equivalent of 7% of the Appraised Inventory Liquidation Value of each Eligible Inventory Category owned by the Borrowers, Henry U.S. and Mayor s Florida, less such reserves as the Administrative Agent from time to time determines in the Administrative Agent s reasonable discretion as being appropriate (without limiting the generality of the foregoing, reserves that (x) ensure that the Loan Parties maintain adequate liquidity for the operation of

their business, (y) cover any deterioration in the amount or value of Collateral and (z) reflect impediments to the Applicable Agent s ability to realize upon the Collateral, shall be deemed to be a reasonable exercise of the Administrative Agent s discretion).

Tranche A-1 Commitment for any Lender, its obligation to make Tranche A-1 Loans up to the maximum principal amount shown on **Schedule 1.1(a)**, or as specified hereafter in the most recent Assignment and Assumption Agreement to which it is a party. Tranche A-1 Commitments means the aggregate amount of such commitments of all Lenders. On the Closing Date the Tranche A-1 Commitments are $11,000,000.

Tranche A-1 Commitment Termination Date the earliest to occur of (a) the Termination Date; (b) the date on which the Tranche A-1 Commitments are terminated pursuant to **Section 2.2**; or (c) the date on which the Tranche A-1 Commitments are terminated pursuant to **Section 11.2**.

Tranche A-1 Deficiency Amount on any date of determination, the amount, if any, by which the outstanding Tranche A-1 Loans at such time exceeds clause (b) of the definition of Tranche A-1 Borrowing Capacity at such time.

Tranche A-1 Excess Availability on any date of determination, an amount equal to the Tranche A-1 Borrowing Capacity, minus the outstanding Tranche A-1 Loans.

Tranche A-1 Lenders the Lenders indicated on **Schedule 1.1(a)** as Lenders of Tranche A-1 Loans and any other Person who hereafter becomes a Tranche A-1 Lender pursuant to the terms hereof.

Tranche A-1 Loans a Loan made pursuant to **Section 2.1.1(b)**.

Tranche A-1 Note a promissory note to be executed by the Borrowers in favor of a Lender in the form of **Exhibit B**, which shall be in the amount of such Lender s Tranche A-1 Commitment and shall evidence the Tranche A-1 Loans made by such Lender.

Tranche A-1 Reserve on any date of determination, an amount equal to the Tranche A-1 Deficiency Amount.

Transferee any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

Type any type of a Loan (i.e., Base Rate Loan, LIBOR Loan, Canadian Prime Rate Loan or Canadian BA Rate Loan) that has the same interest option and, in the case of LIBOR Loans or Canadian BA Rate Loans, the same Interest Period.

UCC the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code or other Applicable Law of such jurisdiction.

Unused Fees as defined in **Section 3.2.1**.

US Borrower as defined in the preamble hereto.

US Borrowing Capacity on any date of determination, an amount in Dollars equal to the lesser of (a) the aggregate amount of US Revolver Commitments and (b) the sum of (i) 85% of the Appraised Inventory Liquidation Value of each Eligible Inventory Category owned by the US Borrower, Henry U.S. or Mayor s Florida; plus (ii) 92% of the Appraised A/R Liquidation Value of Eligible Private Label and Corporate Accounts of the US Borrower, Henry U.S. or Mayor s Florida; plus (iii) 92% of the Eligible Major Credit Card Receivables of the US Borrower, Henry U.S. or Mayor s Florida; minus (iv) the Availability Reserve in respect of the US Borrower, Henry U.S. and/or Mayor s Florida (it being understood that the amount of the Availability Block, the Seasonal Availability Block, the Brinkhaus Reserve, the Quebec Subordinated Debt Reserve, the Loan to Value Reserve, the Term Loan Discretionary Reserve and the Tranche A-1 Reserve shall be allocated, in the sole discretion of the Administrative Agent and without duplication, among the Aggregate Borrowing Capacity, the Canadian Borrowing Capacity and the US Borrowing Capacity).

US Commitment Termination Date the earliest to occur of (a) the Termination Date; (b) the date on which the US Revolver Commitments are terminated pursuant to **Section 2.2**; or (c) the date on which the US Revolver Commitments are terminated pursuant to **Section 11.2**.

US Concentration Account a special concentration account established by the US Borrower with the Administrative Agent, subject to the control of the Administrative Agent.

US Guarantors all Subsidiaries of the Borrowers that have executed a Guaranty and are organized under the laws of any political subdivision of the United States.

US LC Conditions the following conditions necessary for issuance of a Letter of Credit for the account or benefit of the US Borrower: (a) each of the conditions set forth in **Section 6**; (b) after giving effect to such issuance, Total LC Obligations do not exceed the Letter of Credit Subline, Total US Revolver Outstandings do not exceed the US Borrowing Capacity, and Total Revolver Outstandings do not exceed the Aggregate Revolver Borrowing Capacity; (c) the expiration date of such Letter of Credit is (i) subject to **Section 2.3.1(g)** in respect of Auto-Extension Letters of Credit, no more than 365 days from issuance, in the case of standby Letters of Credit, (ii) no more than 180 days from issuance, in the case of documentary Letters of Credit, and (iii) at least 20 Business Days prior to the Termination Date; (d) the Letter of Credit and payments thereunder are denominated in Dollars; and (e) the form of the proposed Letter of Credit is reasonably satisfactory to the Administrative Agent and Bank of America, as Issuing Bank in their discretion.

US LC Obligations an amount equal to the sum (without duplication) of (a) all amounts owing by the US Borrower for any drawings under Letters of Credit (including in respect of any payment made by Bank of America, as Issuing Bank under any LC Guaranty) issued for the account or on behalf of the US Borrower; (b) the aggregate undrawn amount of all outstanding Letters of Credit issued for the account or on behalf of the US Borrower; and (c) all fees and other amounts owing with respect to Letters of Credit issued for the account or on behalf of the US Borrower.

US Lenders the Lenders indicated on **Schedule 1.1(a)** as the Lenders of US Revolver Loans, the Administrative Agent in its capacity of a provider of Swingline Loans, Bank of America, as Issuing Bank (unless the context otherwise requires) and any other Person who hereafter becomes a US Lender pursuant to the terms hereof.

US Loan Parties collectively, the US Borrower and the US Guarantors.

US Obligations all Obligations of the US Loan Parties.

US Revolver Commitment for any US Lender, its obligation to make US Revolver Loans and to participate in US LC Obligations up to the maximum principal amount shown on **Schedule 1.1(a)**, or as specified hereafter in the most recent Assignment and Assumption Agreement to which it is a party (as such amount may be increased or decreased pursuant to the terms hereof). US Revolver Commitments means the aggregate amount of such commitments of all US Lenders. On the Closing Date, the US Revolver Commitments are $124,000,000.

US Revolver Excess Availability as of any date of determination, an amount equal to the US Borrowing Capacity, minus the Total US Revolver Outstandings.

US Revolver Loans (a) a Loan made pursuant to **Section 2.1.1(a)**, (b) any Swingline Loan for the account of the US Borrower, (c) any Overadvance Loan for the account of the US Borrower deemed by the Administrative Agent to be a US Revolver Loan or (d) any Protective Advance deemed by the Administrative Agent to be a US Revolver Loan.

US Revolver Note a promissory note to be executed by the US Borrower in favor of a US Lender in the form of **Exhibit A**, which shall be in the amount of such US Lender s US Revolver Commitment and shall evidence the US Revolver Loans made by such US Lender.

US Revolver Overadvance as defined in **Section 2.1.4**.

Voting Stock with respect to any Person, means the Capital Stock or similar interests, of any class or classes (however designated), the holders of which are at the time entitled, as such holders, to, among other things, vote for the election of the directors (or persons performing similar functions) of the Person involved, whether or not the right so to vote exists by reason of the happening of a contingency.

1.2. Accounting Terms. Under the Loan Documents (except as otherwise specified herein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of the Borrowers delivered to the Administrative Agent before the Closing Date and using the same inventory valuation method as used in such financial statements, except for any change required or permitted by GAAP if the Borrowers certified public accountants concur in such change and the change is disclosed to the Administrative Agent. If any such accounting change results in a change in any of the calculations required by **Section 10.2.12** that would not have resulted had such accounting change not occurred, the parties hereto agree to enter into negotiations in order to amend such provisions so as to equitably reflect such change such that the criteria for evaluating compliance with such covenants by the Borrowers shall be the same after such change as if such change had not been made; provided, however, that no change in GAAP that would affect a calculation that measures compliance with any covenant contained in **Section 10.2.12** shall be given effect until such provisions are amended to reflect such changes in GAAP.

1.3. Certain Matters of Construction. The terms herein, hereof, hereunder and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, from means from and including, and to and until each mean to but excluding. T terms including and include shall mean including, without limitation and, for purposes of each Loan Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document. All references to

(a) laws or statutes include all related rules, regulations, interpretations, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Loan Documents); (c) any section means, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and assigns; or (f) discretion of any Agent, any Issuing Bank or any Lender means the sole and absolute discretion of such Person. Unless the context otherwise requires, all determinations (including calculations of the US Borrowing Capacity, Tranche A-1 Borrowing Capacity, the Canadian Borrowing Capacity, the Aggregate Revolver Borrowing Capacity, the Aggregate Borrowing Capacity, the Term Loan Borrowing Capacity, the Aggregate Excess Availability and the Fixed Charge Coverage Ratio) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. The US Borrowing Capacity, the Tranche A-1 Borrowing Capacity, the Canadian Borrowing Capacity, the Aggregate Revolver Borrowing Capacity, the Aggregate Borrowing Capacity and the Term Loan Borrowing Capacity calculations shall be consistent with historical methods of valuation and calculation, and otherwise reasonably satisfactory to the Administrative Agent (and not necessarily calculated in accordance with GAAP). The Borrowers shall have the burden of establishing any alleged negligence, misconduct or lack of good faith by any Agent, any Issuing Bank or any Lender under any Loan Documents. No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. For purposes of any Collateral located in the Province of Quebec or charged by any deed of hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of a Loan Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (i) personal property shall be deemed to include movable property , (ii) real property shall be deemed to include immovable property and an easement shall be deemed to include a servitude , (iii) tangible property shall be deemed to include corporeal property , (iv) intangible property shall be deemed to include incorporeal property , (v) security interest and mortgage shall deemed to include a hypothec , (vi) all references to filing, registering or recording under the PPSA or UCC shall be deemed to include publication under the Civil Code of Quebec, and all references to releasing any Lien shall be deemed to include a release, discharge and mainlevee of a hypothec, (vii) all references to perfection of or perfected Liens shall be deemed to include a reference to the opposability of such Liens to third parties, (viii) any right of offset , right of setoff or similar expression shall be deemed to include a right of compensation , (ix) goods shall be deemed to include corporeal movable property other than chattel paper, documents of title, instruments, money and securities, and (x) an agent shall be deemed to include a mandatary .

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

1.5. 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. Conversions of Foreign Currencies. The Administrative Agent shall determine the Dollar Equivalent and Canadian Dollar Equivalent of any amount as required hereby, and a determination thereof by the Administrative Agent shall be conclusive absent manifest error. Any Agent may, but shall not be obligated to, rely on any determination made by any Loan Party in any document delivered to the Administrative Agent. Any Agent may determine or redetermine the Dollar Equivalent and Canadian Dollar

Equivalent of any amount on any date either in its own discretion or upon the request of any Lender or any Issuing Bank. Any Agent may set up appropriate rounding off mechanisms or otherwise round-off amounts hereunder to the nearest higher or lower amount in whole Dollar, Canadian Dollar or cent to ensure amounts owing by any party hereunder or that otherwise need to be calculated or converted hereunder are expressed in whole Dollars, Canadian Dollar or in whole cents, as may be necessary or appropriate.

SECTION 2. CREDIT FACILITIES

2.1. Commitments.

2.1.1. Loans. (a) US Revolver Loans. Each US Lender agrees, severally on a Pro Rata basis up to its US Revolver Commitment, on the terms set forth herein, to make loans to the US Borrower in Dollars from time to time through the US Commitment Termination Date. Such loans may be repaid and reborrowed as provided herein. The US Borrower shall not request, and the US Lenders shall not advance any loans under this **Section 2.1.1(a)** (other than US Revolver Loans used to reimburse a draw on a Letter of Credit as provided in **Section 2.3.2**) at any time when the Tranche A-1 Excess Availability is greater than $0. Other than as set forth in **Section 2.1.4**, the US Borrower shall not request, and the US Lenders shall not have any obligation to honor a request for, a US Revolver Loan if (i) the Total US Revolver Outstandings at such time (including the requested US Revolver Loan) would exceed the US Borrowing Capacity, or (ii) the Total Revolver Outstandings (including the requested US Revolver Loan) would exceed the Aggregate Revolver Borrowing Capacity. Each request for a US Revolver Loan by the US Borrower shall be deemed to be a representation by the US Borrower that such US Revolver Loan so requested complies with the conditions set forth in this **Section 2.1.1(a)**. Subject to the terms set forth herein, US Revolver Loans shall be either Base Rate Revolver Loans or LIBOR Revolver Loans.

(b) Tranche A-1 Loans. Each Tranche A-1 Lender agrees, severally on a Pro Rata basis up to its Tranche A-1 Commitment, on the terms set forth herein, to make Tranche A-1 Loans to the US Borrower in Dollars from time to time through the Tranche A-1 Commitment Termination Date. The US Borrower shall borrow the Tranche A-1 Loans up to the amount of the Tranche A-1 Borrowing Capacity prior to requesting any US Revolver Loans. The Tranche A-1 Loans may be repaid and reborrowed as provided herein; provided that the Tranche A-1 Loans may only be prepaid following the repayment of the Total Revolver Outstandings in accordance with **Sections 5.5.1, 5.5.2** or **5.5.3**, as applicable. In no event shall the US Borrower request, and the Tranche A-1 Lenders shall not have any obligation to honor a request for, a Tranche A-1 Loan if the outstanding Tranche A-1 Loans at such time (including the requested Tranche A-1 Loan) would exceed the Tranche A-1 Borrowing Capacity. Each request for a Tranche A-1 Loan by the US Borrower shall be deemed to be a representation by the US Borrower that such Tranche A-1 Loan so requested complies with the conditions set forth in this **Section 2.1.1(b)**. Subject to the terms set forth herein, Tranche A-1 Loans shall be either Base Rate Tranche A-1 Loans or LIBOR Tranche A-1 Loans.

(c) Canadian Revolver Loans. Each Canadian Lender agrees, severally on a Pro Rata basis up to its Canadian Revolver Commitment, on the terms set forth herein, to make loans to the Canadian Borrower in Canadian Dollars or Dollars from time to time through the Canadian Commitment Termination Date. Such loans may be repaid and reborrowed as provided herein. The Canadian Borrower shall not request, and the Canadian Lenders shall not advance any loans under this **Section 2.1.1(c)** (other than Canadian Revolver Loans used to reimburse a draw on a Letter of Credit as provided in **Section 2.3.2**) at any time when the Tranche A-1 Excess Availability is greater than $0. Other than as set forth in **Section 2.1.4**, the Canadian Borrower shall not request, and the Canadian Lenders shall not have any obligation to honor a request for, a Canadian Revolver Loan if (i) the Total Canadian Revolver

Outstandings at such time (including the requested Canadian Revolver Loan) would exceed the Canadian Borrowing Capacity, or (ii) the Total Revolver Outstandings (including the requested Canadian Revolver Loan) would exceed the Aggregate Revolver Borrowing Capacity. Each request for a Canadian Revolver Loan by the Canadian Borrower shall be deemed to be a representation by the Canadian Borrower that such Canadian Revolver Loan so requested complies with the conditions set forth in this **Section 2.1.1(c)**. Subject to the terms set forth herein, (x) Canadian Revolver Loans denominated in Dollars shall be either Base Rate Revolver Loans or LIBOR Revolver Loans; provided, that the aggregate principal amount of any Canadian Revolver Loans denominated in Dollars shall not exceed $10,000,000 at any one time outstanding and (y) Canadian Revolver Loans denominated in Canadian Dollars shall be either Canadian Prime Rate Loans or Canadian BA Rate Loans.

(d) US Borrowing Capacity, Tranche A-1 Borrowing Capacity and the Canadian Borrowing Capacity. The US Borrowing Capacity, the Tranche A-1 Borrowing Capacity, the Canadian Borrowing Capacity, the Aggregate Revolver Borrowing Capacity, the Aggregate Borrowing Capacity and the Term Loan Borrowing Capacity shall be determined from time to time by the Administrative Agent by reference to the most recent Borrowing Base Certificate delivered by the Borrowers. The Administrative Agent may from time to time establish and modify the Availability Reserve in accordance with the definition thereto in respect of the US Borrowing Capacity, the Tranche A-1 Borrowing Capacity, the Canadian Borrowing Capacity, the Aggregate Revolver Borrowing Capacity, the Aggregate Borrowing Capacity and the Term Loan Borrowing Capacity, as the case may be.

2.1.2. Notes. The Loans made by each Lender and interest accruing thereon shall be evidenced by the records of the Administrative Agent and such Lender. At the request of any Lender, the Borrowers shall deliver a US Revolver Note, a Tranche A-1 Note and/or a Canadian Revolver Note, as applicable, to such Lender.

2.1.3. Use of Proceeds. The proceeds of Loans and the issuance of Letters of Credit shall be used by the Borrowers solely (a) to pay fees and transaction expenses associated with the closing of this credit facility; and (b) for working capital and other lawful corporate purposes of the Borrowers and their Subsidiaries in accordance with this Agreement.

2.1.4. Overadvances; Protective Advances. If the Total US Revolver Outstandings exceed the US Borrowing Capacity (US Revolver Overadvance) at any time, the excess amount shall be payable by the US Borrower on demand by the Administrative Agent or the Required US Lenders, but all such Loans shall nevertheless constitute Obligations secured by the Collateral and entitled to all benefits of the Loan Documents. If the Total Canadian Revolver Outstandings exceed the Canadian Borrowing Capacity (Canadian Revolver Overadvance) at any time, the excess amount shall be payable by the Canadian Borrower on demand by the Administrative Agent, the Canadian Agent or the Required Canadian Lenders, but all such Loans shall nevertheless constitute Obligations secured by the Collateral and entitled to all benefits of the Loan Documents. The Applicable Agent shall be authorized, in its discretion, at any time (including any time that a Default or Event of Default exists or any conditions in **Section 6.2** are not satisfied) to make US Revolver Loans or Canadian Revolver Loans (Protective Advances) up to an aggregate amount equal to 10% of the Aggregate Revolver Borrowing Capacity less the aggregate amount of all Overadvance Loans, in each case, if the Applicable Agent deems such Loans necessary or desirable to, directly or indirectly, (A) maintain, protect or preserve the value of the Collateral and/or the Applicable Agent s rights therein as determined in the discretion of the Applicable Agent, including to preserve the Loan Parties business assets and infrastructure (such as the payment of insurance premiums, taxes, necessary suppliers, rent and payroll, including without limitation any other payments made concurrently with a payment relating to the maintenance, protection or preservation of value of the Collateral and/or the Applicable Agent s rights therein or for the preservation of the Loan Parties

business assets or infrastructure which is made incidentally as a result of the ordinary course operation of the Loan Parties treasury management functions), (B) implement and exercise an Enforcement Action with respect to the Collateral, (C) fund an orderly liquidation or wind-down of the Loan Parties assets or business or an Insolvency Proceeding (whether or not occurring prior to or after the commencement of an Insolvency Proceeding), (D) enhance the likelihood, or maximize, the repayment of the Obligations, (E) reflect currency fluctuations, or (F) pay any other amounts chargeable to the Loan Parties under any Loan Documents, including costs, fees and expenses. All Protective Advances shall be Obligations, secured by the Collateral, and shall be treated for all purposes as Extraordinary Expenses. Protective Advances shall be funded as Base Rate Revolver Loans or Canadian Prime Rate Loans, as applicable. Each US Lender shall participate in each Protective Advance to the US Borrower on a Pro Rata basis. Each Canadian Lender shall participate in each Protective Advance to the Canadian Borrower on a Pro Rata basis. In no event shall Protective Advances be required that would cause the Total Revolver Outstandings to exceed the Total Revolver Commitments. Any funding of an Overadvance Loan or sufferance of a Protective Advance, US Revolver Overadvance or a Canadian Overadvance shall not constitute a waiver by the Agents or the Lenders of the Event of Default caused thereby. In no event shall any Borrower or other Loan Party be deemed a beneficiary of this Section nor authorized to enforce any of its terms. Notwithstanding anything herein to the contrary, no event or circumstance shall result in any claim or liability against any Agent for inadvertent Overadvances (i.e., where a US Revolver Overadvance or Canadian Overadvance results from changed circumstances beyond the control of the Applicable Agent (such as (i) a decline in the value of the Collateral, (ii) errors or fraud on a Borrowing Base Certificate, (iii) components of US Borrowing Capacity, Canadian Revolver Capacity or Tranche A-1 Borrowing Capacity on any date thereafter being deemed ineligible, (iv) the return of uncollected checks or other items of payment applied to the reduction of Loans or other similar involuntary or unintentional actions or (v) any other circumstance beyond the reasonable control of the Agents or the Lenders that results in the reduction of the realizable value of any components of US Borrowing Capacity, Canadian Revolver Capacity or Tranche A-1 Borrowing Capacity), and such inadvertent Overadvances shall not reduce the amount of Protective Advances allowed hereunder.

2.2. Reduction or Termination of Commitments.

2.2.1. Reduction or Termination of US Revolver Commitments.

(a) The US Revolver Commitments shall terminate on the Termination Date, unless sooner terminated in accordance with this Agreement. Upon at least twenty-five (25) days prior written notice to the Administrative Agent at any time, the US Borrower may, at its option, terminate the US Revolver Commitments in whole. Any notice of termination given by the US Borrower shall be irrevocable. On the termination date specified in such notice of termination, the US Borrower shall make payment in full, in cash, of all US Revolver Loans and all interest thereon and all Obligations due and owing to the Administrative Agent or any US Lender, in its capacity as a US Lender.

(b) The Borrowers may permanently reduce the US Revolver Commitments, on a Pro Rata basis for each US Lender, from time to time upon written notice to the Administrative Agent, which notice shall specify the amount of the reduction, shall be irrevocable once given, and shall be given at least five (5) Business Days prior to the requested reduction date; provided that, unless terminated in whole, the US Revolver Commitments may not be reduced to an amount that is less than $100,000,000. Each reduction shall be in a minimum amount of $5,000,000, or an increment of $1,000,000 in excess thereof.

(c) Concurrently with any reduction in the US Revolver Commitments as provided in this **Section 2.2.1**, (i) the Total Revolver Commitments of the Lenders shall be reduced by a corresponding amount and (ii) the Canadian Revolver Commitments shall be reduced by an amount such that the ratio of the US Revolver Commitments to the Dollar Equivalent of the Canadian

Revolver Commitments immediately following such reduction is equal to the ratio that existed immediately prior to such reduction. In the event the US Revolver Commitments are terminated, the Total Revolver Commitments and Canadian Revolver Commitments shall be terminated.

(d) Concurrently with any reduction pursuant to **Section 2.2.1(a)**, **(b)** or **(c)**, the Borrowers shall repay the Total US Revolver Outstandings and the Total Canadian Revolver Outstandings as required pursuant to **Section 2.2.4**.

(e) Concurrently with the termination of the US Revolver Commitments at any time prior to the Termination Date, for whatever reason (including, without limitation, whether voluntary or involuntary, resulting from an Event of Default or after acceleration thereof), the US Borrower shall pay to the Administrative Agent, for the Pro Rata benefit of US Lenders and as liquidated damages for loss of bargain (and not as a penalty), an amount equal to (i) if the termination occurs during the period commencing on the Closing Date through and including the first anniversary of the Closing Date, 2.0% of the US Revolver Commitments being terminated; (ii) if the termination occurs during the period commencing on the day immediately following the first anniversary of the Closing Date through and including the second anniversary of the Closing Date, 1.0% of the US Revolver Commitments being terminated; (iii) if the termination occurs at anytime thereafter, 0.50% of the US Revolver Commitments being terminated.

2.2.2. Reduction or Termination of Tranche A-1 Commitments.

(a) The Tranche A-1 Commitments shall terminate on the Termination Date, unless sooner terminated in accordance with this Agreement. Upon at least twenty-five (25) days prior written notice to the Administrative Agent at any time, the US Borrower may, at its option, terminate the Tranche A-1 Commitments in whole so long as the US Revolver Commitments and Canadian Revolver Commitments have been terminated in whole and all Obligations in respect of such Commitments have been repaid in full, in cash. Any notice of termination given by the US Borrower shall be irrevocable. On the termination date specified in such notice of termination, the US Borrower shall make payment in full, in cash, of all Tranche A-1 Loans and all interest thereon and all Obligations due and owing to the Administrative Agent or any Tranche A-1 Lender, in its capacity as the Tranche A-1 Lender.

(b) The US Borrower may permanently reduce the Tranche A-1 Commitments, on a Pro Rata basis for each Tranche A-1 Lender, upon at least five Business Days prior written notice to the Administrative Agent, so long as the US Revolver Commitments and Canadian Revolver Commitments have been terminated in whole and all Obligations in respect of such Commitments have been repaid in full, in cash. Any such notice of reduction shall specify the amount of the reduction, shall be irrevocable once given, and shall be given at least five Business Days prior to the requested reduction date. Each reduction shall be in a minimum amount of $1,000,000, or an increment of $1,000,000 in excess thereof.

(c) Concurrently with any reduction pursuant to **Section 2.2.2(a)** or **(b)**, the Borrowers shall repay the outstanding Tranche A-1 Loans as required pursuant to **Section 2.2.4**.

(d) Concurrently with the termination of the Tranche A-1 Commitments at any time prior to the Termination Date, for whatever reason (including, without limitation, whether voluntary or involuntary, resulting from an Event of Default or after acceleration thereof), the US Borrower shall pay to the Administrative Agent, for the Pro Rata benefit of the Tranche A-1 Lenders and as liquidated damages for loss of bargain (and not as a penalty), an amount equal to (i) if the termination occurs during the period commencing on the Closing Date through and including the first anniversary of the Closing Date, 2.0% of the Tranche A-1 Commitments being terminated; (ii) if the termination occurs during the period commencing on the day immediately following the

first anniversary of the Closing Date through and including the second anniversary of the Closing Date, 1.0% of the Tranche A-1 Commitments being terminated; (iii) if the termination occurs at anytime thereafter, 0.50% of the Tranche A-1 Revolver Commitments being terminated.

2.2.3. Reduction or Termination of Canadian Revolver Commitments; Reduction in Total Revolver Commitment.

(a) The Canadian Revolver Commitments shall terminate on the Termination Date, unless sooner terminated in accordance with this Agreement. Upon at least twenty-five (25) days prior written notice to Agents at any time, the Canadian Borrower may, at its option, terminate the Canadian Revolver Commitments in whole. Any notice of termination given by the Canadian Borrower shall be irrevocable. On the termination date specified in such notice of termination, the Canadian Borrower shall make payment in full, in cash, of Canadian Revolver Loans and all interest thereon and all Obligations due and owing to the Canadian Agent or any Canadian Lender, in its capacity as a Canadian Lender.

(b) The Canadian Borrower may permanently reduce the Canadian Revolver Commitments, on a Pro Rata basis for each Canadian Lender, from time to time upon written notice to Agents, which notice shall specify the amount of the reduction, shall be irrevocable once given and shall be given at least five Business Days prior to the requested reduction date. Each reduction shall be in a minimum amount of Cdn. $5,000,000, or an increment of Cdn. $1,000,000 in excess thereof

(c) Concurrently with any reduction pursuant to **Section 2.2.3(a)** or **(b)**, the Borrowers shall repay the Total Canadian Revolver Outstandings as required pursuant to **Section 2.2.4**.

2.2.4. Mandatory Prepayments.

(a) If at any time, (i) the Total US Revolver Outstandings exceed the US Borrowing Capacity at such time, (ii) the Total Canadian Revolver Outstandings exceeds the Canadian Borrowing Capacity at such time, (iii) the Total Revolver Outstandings exceeds the Aggregate Revolver Borrowing Capacity at such time, or (iv) the aggregate outstanding amount of the Tranche A-1 Loans exceeds the Tranche A-1 Commitments at such time, then the Borrowers shall immediately pay the amount of such excess to the Applicable Agent for the respective accounts of the Applicable Lenders for application to the US Revolver Loans, the Tranche A-1 Loans and/or the Canadian Revolver Loans, as the case may be, and/or Cash Collateralize the US LC Obligations and/or the Canadian LC Obligations, as the case may be; provided that the Tranche A-1 Loans may only be repaid following the repayment of the Total Revolver Outstandings in accordance with **Sections 5.5.1, 5.5.2** or **5.5.3**, as applicable.

(b) Any prepayments required to be made by the Borrowers in respect of the Total US Revolver Outstandings pursuant to clause (a) of this **Section 2.2.4** shall be applied first, to repay the outstanding principal balance of the Swingline Loans advanced to the US Borrower until such Swingline Loans shall have been repaid in full; second, to repay the outstanding principal balance of the US Revolver Loans until such US Revolver Loans shall have been paid in full, and third, to provide Cash Collateral for outstanding Letters of Credit issued for the account or benefit of the US Borrower until such Letters of Credit have been Cash Collateralized in full.

(c) Any prepayments required to be made by the Borrowers in respect of the Total Canadian Revolver Outstandings pursuant to clause (a) of this **Section 2.2.4** shall be applied first, to repay the outstanding principal balance of the Swingline Loans advanced to the Canadian Borrower until such Swingline Loans shall have been repaid in full; second, to repay the outstanding principal balance of the Canadian Revolver Loans until such Canadian Revolver Loans shall have been paid in full, and third, to provide Cash Collateral for outstanding Letters of Credit issued for the account or benefit of the Canadian Borrower until such Letters of Credit have been Cash Collateralized in full.

(d) If, at any time, the aggregate outstanding amount of the Tranche A-1 Loans exceeds the Tranche A-1 Borrowing Capacity, the Borrowers shall repay the Total Revolver Outstandings in accordance with **Sections 5.5.1, 5.5.2** or **5.5.3**, as applicable, and as long as the Tranche A-1 Loans are not repaid pursuant to such Sections, the Administrative Agent shall establish a Tranche A-1 Reserve.

2.3. Letter of Credit Facility.

2.3.1. Issuance of Letters of Credit. The Issuing Banks agree, in reliance upon the agreements of the US Lenders and the Canadian Lenders set forth in this **Section 2.3**, to issue or cause the issuance of Letters of Credit (a) for the account of the US Borrower denominated in Dollars or (b) for the account of the Canadian Borrower denominated in Canadian Dollars or Dollars, in each case, from time to time until 30 days prior to the Termination Date (or (i) in the case of a Letter of Credit issued for the account of the US Borrower, until the US Commitment Termination Date, if earlier or (ii) in the case of a Letter of Credit issued for the account of the Canadian Borrower, until the Canadian Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(a) Each Borrower acknowledges that each Issuing Bank s willingness to issue or cause the issuance of any Letter of Credit is conditioned upon such Issuing Bank s receipt of an LC Application with respect to the requested Letter of Credit, as well as such other instruments and agreements as such Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. No Issuing Bank shall have any obligation to issue any Letter of Credit unless (i) such Issuing Bank receives an LC Request and LC Application at least three Business Days prior to the requested date of issuance; and (ii)(A) in the case of a Letter of Credit issued for the account of benefit of the US Borrower, each US LC Condition or (B) in the case of a Letter of Credit issued for the account or benefit of the Canadian Borrower, each Canadian LC Condition, is satisfied. If any Issuing Bank receives written notice from a US Lender or a Canadian Lender, as applicable, at least one Business Day before issuance of a Letter of Credit that any US LC Condition or any Canadian LC Condition, as the case may be, has not been satisfied, such Issuing Bank shall have no obligation to issue the requested Letter of Credit (or any other) until such US LC Condition or such Canadian LC Condition is satisfied or until the Required Revolver Lenders have waived such condition in accordance with this Agreement. Prior to receipt of any such notice, such Issuing Bank shall not be deemed to have knowledge of any failure of US LC Conditions or Canadian LC Conditions, as applicable. No Issuing Bank shall be under any obligation to issue any Letter of Credit if (i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Bank in good faith deems material to it or (ii) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally.

(b) Letters of Credit may be requested by a Borrower to support any lawful corporate purposes of such Borrower and its Subsidiaries. The renewal or extension of any Letter of Credit shall be treated as the issuance of a new Letter of Credit, except that delivery of a new LC Application shall be required at the reasonable discretion of the applicable Issuing Bank.

(c) The Borrowers assume all risks of the acts, omissions or misuses of any Letter of Credit by the beneficiary; provided, that the foregoing is not intended to, nor shall it prohibit, any Borrower from pursuing all rights and remedies it may have against such beneficiary or assignee thereof. In connection with the issuance of any Letter of Credit, none of any Agent, any Issuing Bank or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and a Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of any Issuing Bank, any Agent or any Lender, including any act or omission of a Governmental Authority. The rights and remedies of the Issuing Banks under the Loan Documents shall be cumulative. The Issuing Banks shall be fully subrogated to the rights and remedies of each beneficiary whose claims against the Borrowers are discharged with proceeds of any Letter of Credit.

(d) In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents, Each Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, notice or other communication in whatever form believed by such Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. Each Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. Each Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact selected with reasonable care.

(e) Notwithstanding anything contained herein to the contrary, no Issuing Bank shall not be under any obligation to issue any Letter of Credit if any Lender is at such time an Impacted Lender hereunder, unless such Issuing Bank has entered into arrangements satisfactory to such Issuing Bank with the Borrowers or such Lender to eliminate such Issuing Bank s risk with respect to such Lender (it being understood that such Issuing Bank would consider the Borrowers providing Cash Collateral to the Applicable Agent, for the benefit of such Issuing Bank, to secure the Impacted Lender s Pro Rata share of the Letter of Credit a satisfactory arrangement); provided that, notwithstanding anything contained in any Loan Document to the contrary, each of the parties hereto hereby agree that any grant of collateral by any Person to the Applicable Agent or such Issuing Bank in connection with such arrangements to eliminate such risks of such Issuing Bank shall be deemed to be permitted under the terms of the Loan Documents (and shall not result in any violation thereof) and neither the Applicable Agent nor such Issuing Bank shall be required to share such collateral with any Lender.

(f) The parties hereto agree that each Existing Letter of Credit described on **Schedule 2.3.1** and issued by Bank of America or any of its Affiliates shall be deemed to be a Letter of Credit issued pursuant to this Agreement, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(g) If any Borrower so requests in any applicable LC Application, each Issuing Bank may, in its sole and absolute discretion, agree to issue a standby Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit such Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable Issuing Bank, the applicable Borrower shall not be required to make a specific request to such Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Applicable Lenders shall be deemed to have authorized (but may not require) such Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than twenty (20) Business Days prior to the Termination Date; provided, however, that such Issuing Bank shall not permit any such extension if (A) such Issuing Bank has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof, or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Applicable Agent that the Required Revolver Lenders have elected not to permit such extension or (2) from the Applicable Agent, any Lender or any Loan Party that one or more of the US LC Conditions or Canadian LC Conditions, as applicable, or one or more of the conditions set forth in **Section 6.2** is not then satisfied, and in each such case directing such Issuing Bank not to permit such extension.

(h) If any Borrower so requests in any applicable Letter of Credit Application, the applicable Issuing Bank may, in its sole and absolute discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an "Auto-Reinstatement Letter of Credit"). Unless otherwise directed by the applicable Issuing Bank, no Borrower shall be required to make a specific request to such Issuing Bank to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Applicable Lenders shall be deemed to have authorized (but may not require) the applicable Issuing Bank to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits such Issuing Bank to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the "Non-Reinstatement Deadline"), the applicable Issuing Bank shall not permit such reinstatement if (A) such Issuing Bank has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof, or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Reinstatement Deadline (1) from the Applicable Agent that the Required Revolver Lenders have elected not to permit such extension or (2) from the Applicable Agent, any Lender or any Loan Party that one or more of the US LC Conditions or Canadian LC Conditions, as applicable, or one or more of the conditions set forth in **Section 6.2** is not then satisfied, and in each such case directing such Issuing Bank not to permit such extension.

(i) Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary of any Borrower, such Borrower shall be obligated to reimburse the applicable Issuing Bank hereunder for any and all drawings under such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of the Subsidiaries inures to the benefit of the such Borrower, and that such Borrower s business derives substantial benefits from the businesses of such Subsidiaries.

(j) Each Issuing Bank shall promptly notify the Agents of the issuance of, and provide Agents with a copy of, each Letter of Credit issued hereunder.

2.3.2. Reimbursement; Participations.

(a) If any Issuing Bank honors any request for payment under a Letter of Credit or, if applicable an LC Guaranty with respect to a Letter of Credit, the applicable Borrower shall pay to such Issuing Bank, on the same day, if notice of such honor is given to the applicable Borrower prior to 1:00 p.m. on the honor date, and otherwise on the next Business Day (Reimbursement Date), the amount paid by such Issuing Bank under such Letter of Credit or, if applicable, under an LC Guaranty with respect to such Letter of Credit, together with interest at the interest rate for (a) in the case of a Letter of Credit denominated in Dollars, Base Rate Revolver Loans and (b) in the case of a Letter of Credit denominated in Canadian Dollars issued for the account of the Canadian Borrower, Canadian Prime Rate Loans, in each case, from the Reimbursement Date until payment by the relevant Borrower. The obligation of the applicable Borrower to reimburse the Issuing Banks for any payment made under a Letter of Credit or LC Guaranty shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any Letter of Credit or the existence of any claim, setoff, defense or other right that the Borrowers may have at any time against the beneficiary. Whether or not any Borrower submits a Notice of Borrowing, the relevant Borrower shall be deemed to have requested a Borrowing of Base Rate Revolver Loans or Canadian Prime Rate Loans, as the case may be, in an amount necessary to pay all amounts due to the applicable Issuing Bank on any Reimbursement Date and (a) in the case of a Letter of Credit issued for the account of the US Borrower, each US Lender agrees to fund its Pro Rata share of such Borrowing whether or not the US Revolver Commitments have terminated, a US Revolver Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied and (b) in the case of a Letter of Credit issued for the account of the Canadian Borrower, each Canadian Lender agrees to fund its Pro Rata share of such Borrowing whether or not the Canadian Revolver Commitments have terminated, a Canadian Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied.

(b) Upon issuance of a Letter of Credit, (i) in the case of a Letter of Credit issued for the account or benefit of the US Borrower, each US Lender and (ii) in the case of a Letter of Credit issued for the account or benefit of the Canadian Borrower, each Canadian Lender, shall be deemed to have irrevocably and unconditionally purchased from the applicable Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all US LC Obligations or Canadian LC Obligations, as the case may be, relating to the Letter of Credit. If any Issuing Bank makes any payment under a Letter of Credit or an LC Guaranty and the applicable Borrower does not reimburse such payment on the Reimbursement Date, the Applicable Agent shall promptly notify the Lenders and each Applicable Lender shall promptly (within one Business Day) and unconditionally pay to the Applicable Agent, for the benefit of such Issuing Bank, such Applicable Lender s Pro Rata share of such payment. Upon request by a US Lender, such Issuing Bank shall furnish copies of any Letters of Credit and LC Documents in its possession at such time.

(c) The obligation of each US Lender to make payments to the Administrative Agent for the account of an Issuing Bank in connection with such Issuing Bank s payment under a Letter of Credit or LC Guaranty issued for the account or benefit of the US Borrower shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Loan Party may have with respect to any Obligations. The obligation of each Canadian Lender to make payments to the Canadian Agent for the account of an Issuing Bank in connection with such Issuing Bank s payment under a Letter of Credit or LC Guaranty issued for the account or benefit of the Canadian Borrower shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in

accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Loan Party may have with respect to any Obligations. No Issuing Bank assumes any responsibility for any failure or delay in performance or any breach by any Borrower or other Person of any obligations under any LC Documents. No Issuing Bank makes any express or implied warranty, representation or guaranty to the Lenders with respect to the Collateral, LC Documents or any Loan Party. No Issuing Bank shall be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Loan Party.

(d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct. No Issuing Bank shall have any liability to any Lender or the Borrower if such Issuing Bank refrains from any action under any Letter of Credit or LC Documents until it receives written instructions from the Required Lenders. In furtherance and not in limitation of the foregoing, each Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

2.3.3. **Cash Collateral**. If any US LC Obligations or Canadian LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default exists, (b) that, in the case of US LC Obligations, the Total US Revolver Outstandings exceed the US Borrowing Capacity, (c) that, in the case of Canadian LC Obligations, the Total Canadian Revolver Outstandings exceed the Canadian Borrowing Capacity, (d) that, in the case of Total LC Obligations, the Total Revolver Outstandings exceed the Aggregate Revolver Borrowing Capacity, (e)(i) in the case of US LC Obligations, after the US Commitment Termination Date or (ii) in the case of Canadian LC Obligations, after the Canadian Commitment Termination Date, (f) within five Business Days prior to the Termination Date or (g) of a repayment or a prepayment of a Tranche A-1 Loan, then the applicable Borrower shall, at the applicable Issuing Bank s or the Applicable Agent s request, pay to such Issuing Bank the amount of all outstanding US LC Obligations and/or outstanding Canadian LC Obligations and Cash Collateralize all outstanding Letters of Credit. If the applicable Borrower fails to Cash Collateralize outstanding Letters of Credit as required herein, the Applicable Lenders may (and shall upon direction of the Applicable Agent) advance, as Base Rate Revolver Loans or Canadian Prime Rate Loans, as applicable, the amount of the Cash Collateral required (whether or not the US Revolver Commitments or Canadian Revolver Commitments have terminated, any US Revolver Overadvance or Canadian Overadvance exists, or the conditions in **Section 6** are satisfied).

2.3.4. **Applicability of International Standby Practices 1998 and Uniform Customs and Practice for Documentary Credits**. Unless otherwise expressly agreed by the applicable Issuing Bank and the applicable Borrower when a Letter of Credit is issued, (i) the rules of the International Standby Practices 1998 published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance) shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance, shall apply to each commercial Letter of Credit.

2.4. Increase in Commitments.

2.4.1. Request for Increase. Provided there exists no Default or Event of Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrowers may request an increase in the Total Revolver Commitments by an amount not exceeding $25,000,000; provided that (i) any such request for an increase shall be in a minimum amount of $10,000,000 and in $5,000,000 increments in excess thereof, (ii) the Borrowers shall not be permitted to make more than two (2) such requests and (iii) any increase in the Total Revolver Commitments pursuant to this **Section 2.4** shall result in an increase in the US Revolver Commitments in a corresponding amount and an increase in the Canadian Revolver Commitments by an amount such that the ratio of the US Revolver Commitments to the Dollar Equivalent of the Canadian Revolver Commitments immediately following such increase is equal to the ratio that existed immediately prior to such increase. At the time of sending such notice, the Borrowers (in consultation with the Administrative Agent) shall specify the time period within which each Revolver Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Revolver Lenders).

2.4.2. Lender Elections to Increase. Each Revolver Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Pro Rata share of such requested increase. Any Revolver Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

2.4.3. Notification by the Administrative Agent; Additional Revolver Lenders. The Administrative Agent shall notify the Borrowers and each Revolver Lender of the Revolver Lenders responses to each request made hereunder. To achieve the full amount of a requested increase, and subject to the approval of the Administrative Agent and each Issuing Bank, the Borrowers may also invite additional Eligible Assignees to become Revolver Lenders pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel.

2.4.4. Effective Date and Allocations. If the Total Revolver Commitments are increased in accordance with this **Section 2.4**, the Administrative Agent and the Borrowers shall determine the effective date (the Revolver Commitment Increase Effective Date) and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrowers and the Revolver Lenders of the final allocation of such increase and the Revolver Commitment Increase Effective Date.

2.4.5. Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Borrowers shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Revolver Commitment Increase Effective Date signed by a Senior Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Borrowers, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in **Section 9** and the other Loan Documents are true and correct in all material respects on and as of the Revolver Commitment 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 in all material respects as of such earlier date, and (B) no Default or Event of Default exists. The Borrowers shall prepay any Revolver Loans outstanding on the Revolver Commitment Increase Effective Date (and pay any additional amounts required pursuant to **Section 3.9**) to the extent necessary to keep the outstanding Revolver Loans ratable with any revised Pro Rata shares arising from any nonratable increase in the Commitments under this **Section 2.4**

2.4.6. Conflicting Provisions. This **Section 2.4** shall supersede any provisions in **Section 14.1** to the contrary.

SECTION 3. INTEREST, FEES AND CHARGES

3.1. Interest.

3.1.1. Rates and Payment of Interest.

(a) The Obligations shall bear interest (i) if a Base Rate Revolver Loan, at the Base Rate in effect from time to time, plus the Applicable Margin for Base Rate Revolver Loans; (ii) if a Base Rate Tranche A-1 Loan, at the Base Rate in effect from time to time, plus the Applicable Margin for Base Rate Tranche A-1 Loans; (iii) if a LIBOR Revolver Loan, at Adjusted LIBOR for the applicable Interest Period, plus the Applicable Margin for LIBOR Revolver Loans; (iv) if a LIBOR Tranche A-1 Loan, at Adjusted LIBOR for the applicable Interest Period, plus the Applicable Margin for LIBOR Tranche A-1 Loans; (v) if Canadian Prime Rate Loans, at the Canadian Prime Rate in effect from time to time, plus the Applicable Margin for Canadian Prime Rate Loans; (vi) if a Canadian BA Rate Loan, at the Canadian BA Rate for the applicable Interest Period, plus the Applicable Margin for Canadian BA Rate Loans; and (vii) if any other Obligation (including, to the extent permitted by law, interest not paid when due), at the Base Rate in effect from time to time, plus the Applicable Margin for Base Rate Tranche A-1 Loans. Interest shall accrue from the date the Loan is advanced or the Obligation is incurred or payable, until paid by the Borrowers. If a Loan is repaid on the same day made, one day s interest shall accrue.

(b) During any Event of Default described in **Section 11.1(a)**, all Obligations shall bear interest at the Default Rate. During any other Event of Default, at the option of the Administrative Agent or upon the request of the Required Lenders, all Obligations shall bear interest at the Default Rate. Each Borrower acknowledges that the cost, expense and risk to each Agent and each Lender due to an Event of Default are difficult to ascertain and that the Default Rate is a fair and reasonable estimate to compensate the Agents and the Lenders for such added cost, expense and risk.

(c) Interest accrued on the Loans shall be due and payable in arrears, and each of the US Borrower and the Canadian Borrower promises to pay interest to the Applicable Lenders, (i) with respect to each Base Rate Loan and each Canadian Prime Rate Loan, on the first Business Day of each calendar quarter, (ii) with respect to each LIBOR Loan and each Canadian BA Rate Loan, on the last day of its Interest Period; provided that if any Interest Period for a LIBOR Loan or a Canadian BA Rate Loan exceeds three months, interest accrued on such LIBOR Loan or such Canadian BA Rate Loan shall also be due and payable on the respective dates that fall every three months after the beginning of such Interest Period, (iii) on any date of prepayment, with respect to the principal amount of Loans being prepaid; and (iv) with respect to any termination or reduction of the US Revolver Commitments, the Tranche A-1 Commitments or the Canadian Revolver Commitment, on the date of such termination or reduction with respect to the principal amount of Loans where the commitment to make such Loans is being terminated. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents and, if no payment date is specified, shall be due and payable **on demand**. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable **on demand**.

3.1.2. Application of Adjusted LIBOR and/or the Canadian BA Rate to Outstanding Loans.

(a) Any Borrower may on any Business Day, subject to delivery of a Notice of Conversion/Continuation under clause (b) below, elect to convert any portion of its Base Rate Revolver Loans to, or to continue any of its LIBOR Revolver Loan at the end of its Interest Period as, a LIBOR Revolver Loan. The US Borrower may on any Business Day, subject to delivery of a Notice of Conversion/Continuation under clause (b) below, elect to convert any portion of the Base Rate Tranche A-1 Loans to, or to continue any LIBOR Tranche A-1 Loan at the end of its Interest Period as, a LIBOR Tranche A-1 Loan. The Canadian Borrower may on any Business Day, subject to delivery of a Notice of Conversion/Continuation under clause (c) below, elect to convert any portion of the Canadian Prime Rate Loan to, or to continue any Canadian BA Rate Loan at the end of its Interest Period as, a Canadian BA Rate Loan. During any Default or Event of Default, the Administrative Agent may (and shall at the direction of the Required Lenders) declare that no Loan may be made, converted or continued as a LIBOR Revolver Loan. During any Default or Event of Default, the Administrative Agent may (and shall at the direction of the Required Lenders) declare that no Loan may be made, converted or continued as a LIBOR Tranche A-1 Loan. During any Default or Event of Default, the Canadian Agent may (and shall at the direction of the Required Lenders) declare that no Loan may be made, converted or continued as a Canadian BA Rate Loan.

(b) Whenever any Borrower desires to convert or continue its Loans as LIBOR Loans, such Borrower shall give the Applicable Agent a Notice of Conversion/Continuation, no later than 11:00 a.m. at least three Business Days before the requested conversion or continuation date. Promptly after receiving any such notice, the Applicable Agent shall notify each Applicable Lender thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the aggregate principal amount of Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be one month if not specified). If, upon the expiration of any Interest Period in respect of any LIBOR Revolver Loans, a Borrower shall have failed to deliver a Notice of Conversion/Continuation, it shall be deemed to have elected to convert such Loans into Base Rate Revolver Loans. If, upon the expiration of any Interest Period in respect of any LIBOR Tranche A-1 Loans, the US Borrower shall have failed to deliver a Notice of Conversion/Continuation, it shall be deemed to have elected to convert such Loans into Base Rate Tranche A-1 Loans.

(c) Whenever the Canadian Borrower desires to convert or continue Canadian Prime Rate Loans as Canadian BA Rate Loans, the Canadian Borrower shall give the Canadian Agent a Notice of Conversion/Continuation, no later than 11:00 a.m. at least three Business Days before the requested conversion or continuation date. Promptly after receiving any such notice, the Canadian Agent shall notify each Canadian Lender thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the aggregate principal amount of Canadian Revolver Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be one month if not specified). If, upon the expiration of any Interest Period in respect of any Canadian BA Rate Loan, the Canadian Borrower shall have failed to deliver a Notice of Conversion/Continuation, it shall be deemed to have elected to convert such Canadian Revolver Loans into Canadian Prime Rate Loans.

3.1.3. Interest Periods. In connection with the making, conversion or continuation of (a) any LIBOR Loans, the Borrowers shall select an interest period (Interest Period) to apply, which interest period shall be one, two, three or six months, to the extent any such interest period is available and (b) any Canadian BA Rate Loans, the Canadian Borrower shall select an Interest Period to apply, which interest period shall be one, two, three or six months, to the extent any such interest period is available; provided, however, that:

(a) the Interest Period shall commence on the date the Loan is made or continued as, or converted into, a LIBOR Loan or a Canadian BA Rate Loan, as the case may be, and shall expire on the numerically corresponding day in the calendar month at its end;

(b) if any Interest Period commences on a day for which there is no corresponding day in the calendar month at its end or if such corresponding day falls after the last Business Day of such month, then the Interest Period shall expire on the last Business Day of such month; and if any Interest Period would expire on a day that is not a Business Day, the period shall expire on the next Business Day; and

(c) no Interest Period shall extend beyond the Termination Date.

3.1.4. Interest Rate Not Ascertainable. If the Applicable Agent shall determine that on any date for determining Adjusted LIBOR or the Canadian BA Rate, adequate and fair means do not exist for ascertaining any such rate on the basis provided herein, then such Agent shall immediately notify the Borrowers of such determination. Until the Applicable Agent notifies the Borrowers that such circumstance no longer exists, the obligation of the Lenders to make LIBOR Loans or Canadian BA Rate Loans, as the case may be, shall be suspended, and no further Loans may be borrowed, converted into or continued as LIBOR Loans or Canadian BA Rate Loans, as applicable.

3.2. Fees.

3.2.1. Unused Facility Fee. The US Borrower shall pay to the Administrative Agent (i) for the Pro Rata benefit of the US Lenders, a fee equal to 0.50% per annum times the amount by which the Total Revolver Commitments exceed the average daily balance of the Total Revolver Outstandings (excluding Swingline Loans) during any calendar quarter and (ii) for the Pro Rata benefit of the Tranche A-1 Lenders, a fee equal to 0.50% per annum times the amount by which the Tranche A-1 Commitments exceed the average daily balance of Tranche A-1 Loans during any calendar quarter. The fees payable under this Section 3.2.1 (collectively, the "Unused Fees") shall be payable quarterly in arrears on the first Business Day of each calendar quarter and on the US Commitment Termination Date and Tranche A-1 Commitment Termination Date, as applicable.

3.2.2. LC Facility Fees. The relevant Borrower shall pay (i) to the Applicable Agent, for the Pro Rata benefit of the Applicable Lenders, a fee equal to the per annum rate of the Applicable Margin in effect for Standby Letter of Credit Fees times the average daily stated amount of standby Letters of Credit issued for the account or benefit of such Borrower, which fee (a "Standby Letter of Credit Fee") shall be payable quarterly in arrears, on the first Business Day of each calendar quarter; (ii) to the Applicable Agent, for the Pro Rata benefit of the Applicable Lenders, a fee equal to the per annum rate of the Applicable Margin in effect for Documentary Letter of Credit Fees times the average daily stated amount of documentary Letters of Credit issued for the account or benefit of such Borrower, which fee (a "Documentary Letter of Credit Fee") shall be payable quarterly in arrears, on the first Business Day of each calendar quarter; and (iii) to each Issuing Bank, for its own account, all customary charges associated with the fronting, issuance, amending, negotiating, payment, processing, transfer and administration of Letters of Credit, which charges shall be paid as and when incurred. At any time after the occurrence and during the continuance of an Event of Default, the fees payable under clauses (i) and (ii) shall accrue interest at the Default Rate.

3.2.3. **Administrative Agent Fees**. In consideration of the Administrative Agent s syndication of the Commitments and service as the Administrative Agent hereunder, the Borrowers shall pay to the Administrative Agent, for its own account, the fees described in the Fee Letter.

3.3. **Computation of Interest, Fees, Yield Protection**. All computations of interest for Base Rate Loans when the Base Rate is determined by Bank of America s prime rate and Canadian Prime Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computation of interest, as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed, based on a year of 360 days. Each determination by any Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate or refund, nor subject to proration except as specifically provided herein. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by the Borrowers under **Section 3.4, 3.6, 3.7, 3.9** or **5.8**, submitted to the Borrowers by the Applicable Agent or the affected Lender, as applicable, shall be final, conclusive and binding for all purposes, absent manifest error. For the purpose of complying with the Interest Act (Canada), it is expressly stated that where interest or a fee is calculated pursuant hereto at a rate based upon a 360-day period (for the purposes of this Section, the first rate), the yearly rate or percentage of interest to which the first rate is equivalent is the first rate multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360, and the parties hereto acknowledge that there is a material distinction between the nominal and effective rates of interest and that they are capable of making the calculations necessary to compare such rates and that the calculations herein are to be made using the nominal rate method and not on any basis that gives effect to the principle of deemed reinvestment of interest.

3.4. **Reimbursement Obligations**. The Borrowers shall reimburse the Applicable Agent for all Extraordinary Expenses. Without duplication, the Borrowers shall also reimburse the Applicable Agent for all reasonable legal, accounting, appraisal, consulting, and other fees, costs and expenses incurred by it in connection with (a) negotiation, preparation, execution and delivery of any Loan Documents, including any amendment or other modification thereof (whether or not the transactions contemplated hereby or thereby shall be consummated); (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of any Agent s Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral; (c) all reasonable out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; and (d) subject to the limits of **Section 10.1.1(b)**, each inspection, audit or appraisal with respect to any Loan Party or Collateral, whether prepared by any Agent s personnel or a third party. The Borrowers shall also reimburse the Agents and the Lenders for all reasonable costs and expenses incurred by them (whether during an Event of Default or otherwise) in connection with the enforcement or preservation of any rights under this Agreement or any of the other Loan Documents (including during any workout, restructuring or negotiations in respect of Loans, Letters of Credit, Loan Documents or the transactions contemplated thereby). All amounts reimbursable by the Borrowers under this **Section 3.4** shall constitute Obligations secured by the Collateral and shall be payable within twenty Business Days after presentation by any Agent to the Borrowers of a reasonably detailed itemization of such amounts.

3.5. **Illegality**. Notwithstanding anything to the contrary herein, if (a) any change in any law or interpretation thereof, made after the date hereof, by any Governmental Authority makes it unlawful for a Lender to make or maintain a LIBOR Loan or a Canadian BA Rate Loan or to maintain any Commitment with respect to LIBOR Loans or Canadian BA Rate Loans or (b) a Lender determines that the making or continuance of a LIBOR Loan or a Canadian BA Rate Loan has become impracticable as a result of a circumstance that adversely affects the London interbank market, any other relevant interbank market or the position of such Lender in such

market, then such Lender shall give notice thereof to the Applicable Agent and the Borrowers and may (i) declare that LIBOR Loans and/or Canadian BA Rate Loans will not thereafter be made by such Lender, whereupon (x) where such Lender is a Revolver Lender any request for a LIBOR Revolver Loan from such Lender shall be deemed to be a request for a Base Rate Revolver Loan, (y) where such Lender is a Tranche A-1 Lender any request for a LIBOR Tranche A-1 Loan from such Lender shall be deemed to be a request for a Base Rate Tranche A-1 Loan and (z) where such Lender is a Canadian Lender any request for a Canadian BA Rate Loan from such Canadian Lender shall be deemed to be a request for a Canadian Prime Rate Loan, in each case, unless such Lender s declaration has been withdrawn (and it shall be withdrawn promptly upon cessation of the circumstances described in clause (a) or (b) above); and/or (ii) (x) where such Lender is a Revolver Lender, require that all outstanding LIBOR Revolver Loans made by such Lender be converted to Base Rate Revolver Loans immediately, in which event all outstanding LIBOR Revolver Loans of such Lender shall be immediately converted to Base Rate Revolver Loans, (y) where such Lender is a Tranche A-1 Lender, require that all outstanding LIBOR Tranche A-1 Loans made by such Lender be converted to Base Rate Tranche A-1 Loans immediately, in which event all outstanding LIBOR Tranche A-1 Loans of such Lender shall be immediately converted to Base Rate Tranche A-1 Loans and (z) where such Lender is a Canadian Lender, require that all outstanding Canadian BA Rate Loans made by such Lender be converted to Canadian Prime Rate Loans immediately, in which event all outstanding Canadian BA Rate Loans of such Lender shall be immediately converted to Canadian Prime Rate Loans.

3.6. Increased Costs. If, by reason of (a) the introduction of or any change (including any change by way of imposition or increase of any reserve requirements (but without duplication of any amounts described in the last paragraph of this **Section 3.6**)) in any law or interpretation thereof, in each case made after the date hereof, or (b) the compliance with any guideline or request from any Governmental Authority or other Person exercising control over banks or financial institutions generally (whether or not having the force of law), promulgated after the date hereof:

(i) a Lender shall be subject to any Tax with respect to any LIBOR Loan, Canadian BA Rate Loan or Letter of Credit or its obligation to make LIBOR Loans, Canadian BA Rate Loans, issue Letters of Credit or participate in US LC Obligations and/or Canadian LC Obligations, or a change shall result in the basis of taxation of any payment to a Lender with respect to its LIBOR Loans, Canadian BA Rate Loans or its obligation to make LIBOR Loans, Canadian BA Rate Loans, issue Letters of Credit or participate in US LC Obligations and/or Canadian LC Obligations (except for Excluded Taxes); or

(ii) any reserve (including any imposed by the Board of Governors), special deposits or similar requirement against assets of, deposits with or for the account of, or credit extended by, a Lender shall be imposed or deemed applicable, or any other condition affecting a Lender s LIBOR Loans or Canadian BA Rate Loans or obligation to make LIBOR Loans, Canadian BA Rate Loans, issue Letters of Credit or participate in US LC Obligations and/or Canadian LC Obligations shall be imposed on such Lender or the London interbank market or such other relevant interbank market;

and as a result there shall be a material increase in the cost to such Lender of agreeing to make or making, funding or maintaining LIBOR Loans, Canadian BA Rate Loans, Letters of Credit or participations in US LC Obligations and/or Canadian LC Obligations (except to the extent already included in determination of Adjusted LIBOR or the Canadian BA Rate), or there shall be a reduction in the amount receivable by such Lender, then the Lender shall promptly notify the Borrowers and Agents of such event, and the Borrowers shall, within five days following demand therefor, pay such Lender the amount of such increased costs or reduced amounts; provided, however, that such Lender shall repay to the Borrowers any amounts paid by the Borrowers to such Lender under this **Section 3.6** at any time such Lender shall determine that such change or compliance was not applicable to, or required by, such Lender.

If a Lender determines that, because of circumstances described above or any other circumstances arising hereafter affecting such Lender, the London interbank market, such other relevant interbank market or the Lender s position in any such market, Adjusted LIBOR, Canadian BA Rate or its Applicable Margin, as applicable, will not adequately and fairly reflect the cost to such Lender of funding LIBOR Loans or Canadian BA Rate Loans, issuing Letters of Credit or participating in US LC Obligations and/or Canadian LC Obligations, then (A) the Lender shall promptly notify the Borrowers and Agents of such event; (B) such Lender s obligation to make LIBOR Loans, Canadian BA Rate Loans, issue Letters of Credit or participate in US LC Obligations and/or Canadian LC Obligations shall be immediately suspended, until each condition giving rise to such suspension no longer exists; and (C) (x) where such Lender is a Revolver Lender such Lender shall make a Base Rate Revolver Loan as part of any requested Borrowing of LIBOR Revolver Loans, which Base Rate Revolver Loan shall, for all purposes, be considered part of such Borrowing, (y) where such Lender is a Tranche A-1 Lender such Lender shall make a Base Rate Tranche A-1 Loan as part of any requested Borrowing of LIBOR Tranche A-1 Loans, which Base Rate Tranche A-1 Loan shall, for all purposes, be considered part of such Borrowing and (z) where such Lender is a Canadian Lender such Lender shall make a Canadian Prime Rate Loan as part of any requested Borrowing of Canadian BA Rate Loans, which Canadian Prime Rate Loan shall, for all purposes, be considered part of such Borrowing.

In addition to the foregoing, the applicable Borrower shall pay to each Applicable Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as Eurocurrency liabilities), additional interest on the unpaid principal amount of each LIBOR Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the LIBOR Loans or Canadian BA Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which in each case shall constitute Obligations and be due and payable on each date on which interest is payable on such Loan, provided the Borrower Agent shall have received at least 10 days prior notice (with a copy to the Applicable Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice 10 days prior to the relevant interest payment date provided for in this Agreement, such additional interest or costs shall be due and payable 10 days from receipt of such notice.

3.7. Capital Adequacy. If a Lender determines that any introduction of or any change in a Capital Adequacy Regulation, any change in the interpretation or administration of a Capital Adequacy Regulation by a Governmental Authority charged with interpretation or administration thereof, or any compliance by such Lender or any Person controlling such Lender with a Capital Adequacy Regulation, in each case made after the date hereof, increases the amount of capital required or expected to be maintained by such Lender or Person (taking into consideration its capital adequacy policies and desired return on capital) as a consequence of such Lender s Commitments, Loans, participations in US LC Obligations or Canadian LC Obligations or other obligations under the Loan Documents, then the Borrowers shall, within ten days following demand therefor, pay such Lender an amount sufficient to compensate for such increase. A Lender s demand for payment shall set forth the nature of the occurrence giving rise to such compensation and a calculation of the amount to be paid. In determining such amount, the Lender may use any reasonable averaging and attribution method.

3.8. Mitigation. Each Lender agrees that, upon becoming aware that it is subject to **Section 3.5, 3.6**, **3.7** or **5.8**, it will take reasonable measures to reduce the Borrowers obligations under such Sections, including funding or maintaining its Commitments or Loans through another office, as long as use of such measures would not adversely affect the Lender s Commitments, Loans, business or interests, and would not be inconsistent with any applicable legal or regulatory restriction.

3.9. Funding Losses. If for any reason (other than default by a Lender) (a) any Borrowing of, or conversion to or continuation of, a LIBOR Loan or Canadian BA Rate Loan does not occur on the date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation (whether or not withdrawn), (b) any repayment or conversion of a LIBOR Loan or Canadian BA Rate Loan occurs on a day other than the end of its Interest Period, or (c) the Borrowers fail to repay a LIBOR Loan or Canadian BA Rate Loan when required hereunder, then the Borrowers shall pay to the Applicable Agent its customary administrative charge and to each Lender all losses and expenses that it sustains as a consequence thereof, including any loss or expense arising from liquidation or redeployment of funds or from fees payable to terminate deposits of matching funds. The Lenders shall not be required to purchase Dollar deposits in the London interbank market or any other offshore Dollar market to fund any LIBOR Loan, but the provisions hereof shall be deemed to apply as if each Lender had purchased such deposits to fund its LIBOR Loans. The Lenders shall not be required to purchase Canadian Dollar deposits in the relevant interbank market or offshore Canadian Dollar market to fund any Canadian BA Rate Loan, but the provisions hereof shall be deemed to apply as if each Lender had purchased such deposits to fund its Canadian BA Rate Loan.

3.10. Maximum Interest. In no event shall interest, charges or other amounts that are contracted for, charged or received by the Agents and the Lenders pursuant to any Loan Documents and that are deemed interest under Applicable Law (interest) exceed the highest rate permissible under Applicable Law (maximum rate). If, in any period, any interest rate, absent the foregoing limitation, would have exceeded the maximum rate, then the interest rate for that month shall be the maximum rate and, if in a future month, that interest rate would otherwise be less than the maximum rate, then the rate shall remain at the maximum rate until the amount of interest actually paid equals the amount of interest which would have accrued if it had not been limited by the maximum rate. If, upon payment in full, in cash, of the Obligations, the total amount of interest actually paid under the Loan Documents is less than the total amount of interest that would, but for this **Section 3.10**, have accrued under the Loan Documents, then the Borrowers shall, to the extent permitted by Applicable Law, pay to the Applicable Agent, for the account of the Applicable Lenders, (a) the lesser of (i) the amount of interest that would have been charged if the maximum rate had been in effect at all times, or (ii) the amount of interest that would have accrued had the interest rate otherwise set forth in the Loan Documents been in effect, minus (b) the amount of interest actually paid under the Loan Documents. If a court of competent jurisdiction determines that any Agent or any Lender has received interest in excess of the maximum amount allowed under Applicable Law, such excess shall be deemed received on account of, and shall automatically be applied to reduce, Obligations other than interest (regardless of any erroneous application thereof by any Agent or any Lender), and upon payment in full, in cash of the Obligations, any balance shall be refunded to the Borrowers. In determining whether any excess interest has been charged or received by any Agent or any Lender, all interest at any time charged or received from the Borrowers in connection with the Loan Documents shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the Obligations.

3.11. Replacement of the Lenders. In the event that any Lender (i) notifies the Borrower Agent that, pursuant to **Section 3.5**, such Lender can no longer make LIBOR Loans or Canadian BA Rate Loans, (ii) demands payment of additional amounts or increased costs pursuant to **Section 3.6** or (iii) is a Defaulting Lender (each an Affected Lender), then the Borrower Agent may, at its option, notify the Applicable Agent and such Affected Lender of its intention to replace the Affected Lender. So long as no Default

or Event of Default shall have occurred and be continuing, the Borrower Agent, with the consent of the Administrative Agent, may obtain, at the Borrowers expense, a replacement Lender (Replacement Lender) for the Affected Lender, which Replacement Lender must be (i) an Eligible Assignee and (ii) satisfactory to the Administrative Agent. If the Borrowers obtain a Replacement Lender within ninety (90) days following notice of their intention to do so, the Affected Lender must sell and assign its Loans and Commitments to such Replacement Lender for an amount equal to the principal balance of all Loans held by the Affected Lender and all accrued interest and fees with respect thereto through the date of such sale; provided that the Borrowers shall have reimbursed such Affected Lender for the additional amounts or increased costs that it is entitled to receive under this Agreement through the date of such sale and assignment. Notwithstanding the foregoing, the Borrowers shall not have the right to obtain a Replacement Lender if the Affected Lender (i) in the case of a notice under **Section 3.5**, rescinds its notice that it can no longer fund LIBOR Loans or Canadian BA Rate Loans or (ii) in the case of a demand under **Section 3.6**, rescinds its demand for increased costs or additional amounts, within ten (10) days following its receipt of the Borrower Agent s notice of intention to replace such Affected Lender. Furthermore, if the Borrower Agent gives a notice of intention to replace and does not so replace such Affected Lender within ninety (90) days thereafter, the Borrowers rights under this paragraph as to such noticed replacement and in connection with such Affected Lender shall terminate.

SECTION 4. LOAN ADMINISTRATION

4.1. Manner of Borrowing and Funding Loans.

4.1.1. Notice of Borrowing.

(a) Whenever the Borrowers desire funding of a Borrowing of Loans, the Borrower Agent shall give the Administrative Agent a Notice of Borrowing. Such notice must be received by the Administrative Agent no later than 1:00 p.m. (i) on the Business Day of the requested funding date, in the case of Base Rate Loans or Canadian Prime Rate Loans, and (ii) at least three Business Days prior to the requested funding date, in the case of LIBOR Loans or Canadian BA Rate Loans. Notices received after 1:00 p.m. shall be deemed received on the next Business Day. Each Notice of Borrowing shall be irrevocable and shall specify (A) the principal amount of the Borrowing, (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a US Revolver Loan, Canadian Revolver Loan or Tranche A-1 Loan, (D) whether the Borrowing is to be made as a Base Rate Loan, LIBOR Loan, Canadian Prime Rate Loan or a Canadian BA Rate Loan and (E) in the case of LIBOR Loans or Canadian BA Rate Loans, the duration of the applicable Interest Period (which shall be deemed to be one month if not specified). Each borrowing shall be in an aggregate amount of not less than (i) in the case of Base Rate Loans or LIBOR Rate Loans, $500,000 or an integral multiple of $100,000 in excess thereof, and (ii) in the case of Canadian Prime Rate Loans or Canadian BA Rate Loans, Cdn. $500,000 or an integral multiple of Cdn. $100,000 in excess thereof.

(b) Unless payment is otherwise timely made by the Borrowers, the becoming due of any Obligations (whether principal, interest, fees or other charges, including Extraordinary Expenses, US LC Obligations, Canadian LC Obligations, Cash Collateral and Bank Product Debt) shall be deemed to be a request for Base Rate Loans or Canadian Prime Rate Loans, as applicable, on the due date, in the amount of such Obligations. Such Base Rate Loans shall be Base Rate Tranche A-1 Loans so long as Tranche A-1 Excess Availability is greater than $0 and thereafter shall be Base Rate Revolver Loans.

(c) If the Borrowers establish a controlled disbursement account with any Agent or any branch or Affiliate of such Agent, then the presentation for payment of any check or other item of payment drawn on such account at a time when there are insufficient funds to cover it shall be deemed to be, on the date of such presentation, in the amount of the check and items presented for payment, a request for (i) with respect to the US Borrower, Base Rate Tranche A-1 Loans to the extent that Tranche A-1 Excess Availability is

greater than $0 and thereafter shall be deemed to be a request for Base Rate US Revolver Loans and (ii) with respect to the Canadian Borrower, Canadian Prime Rate Loans. The proceeds of such Loans may be disbursed directly to the controlled disbursement account or other appropriate account.

4.1.2. Fundings by the Lenders. Each US Lender shall timely honor its US Revolver Commitment by funding its Pro Rata share of each Borrowing of US Revolver Loans that is properly requested hereunder and each Tranche A-1 Lender shall timely honor its Tranche A-1 Commitment by funding its Pro Rata share of each Borrowing of Tranche A-1 Loans that is properly requested hereunder. Each Canadian Lender shall timely honor its Canadian Revolver Commitment by funding its Pro Rata share of each Borrowing of Canadian Revolver Loans that is properly requested hereunder. Except for Borrowings to be made as Swingline Loans, the Applicable Agent shall endeavor to notify the Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 2:00 p.m. on the proposed funding date for Base Rate Loans or Canadian Prime Rate Loans or by 3:00 p.m. at least three Business Days before any proposed funding of LIBOR Loans or Canadian BA Rate Loans. Each Lender shall fund to the Applicable Agent such Lender s Pro Rata share of the Borrowing to the account specified by such Agent in immediately available funds not later than 3:00 p.m. on the requested funding date, unless such Agent s notice is received after the times provided above, in which event the Lender shall fund its Pro Rata share by 11:00 a.m. on the next Business Day. Subject to its receipt of such amounts from the Lenders, the Applicable Agent shall disburse the proceeds of the Loans as directed by the Borrowers. Unless the Applicable Agent shall have received (in sufficient time to act) written notice from a Lender that it does not intend to fund its Pro Rata share of a Borrowing, such Agent may assume that such Lender has deposited or promptly will deposit its share with such Agent, and such Agent may disburse a corresponding amount to the Borrowers. If a Lender s share of any Borrowing is not in fact received by the Applicable Agent, then such Lender and the Borrowers agree to repay to the Applicable Agent **on demand** the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing. If a Borrower and such Lender shall pay such interest to the Applicable Agent for the same or an overlapping period, the Applicable Agent shall promptly remit to such Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Applicable Agent, then the amount so paid shall constitute such Lender s Loan included in such Borrowing. Any payment by a Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Applicable Agent.

4.1.3. Swingline Loans; Settlement.

(a) In reliance upon the agreements of:

(i) the US Revolver Lenders set forth in this **Section 4.1.3**, the Administrative Agent may, in its sole discretion, but shall not be obligated to, advance Swingline Loans denominated in Dollars to the US Borrower out of the Administrative Agent s own funds unless the funding is specifically required to be made by all US Lenders hereunder; so long as, after giving effect to such Swingline Loan, the Dollar Equivalent of all outstanding Swingline Loans does not exceed the Swingline Loan Subline. Each Swingline Loan for the account of the US Borrower shall constitute a Base Rate Revolver Loan for all purposes, except that payments thereon (including interest thereon) shall be made to the Administrative Agent for its own account. The obligation of the US Borrower to repay Swingline Loans shall be evidenced by the records of the Administrative Agent and need not be evidenced by any promissory note. Any notice from the US Borrower requesting a Swingline Loan must be received by the Administrative Agent no later than 1:00 p.m. on the Business Day of the requested funding date. Any Swingline Loan requested by the US Borrower shall be in a minimum amount of $25,000; and

(ii) the Canadian Revolver Lenders set forth in this **Section 4.1.3**, the Canadian Agent may, in its sole discretion, but shall not be obligated to, advance Swingline Loans denominated in Canadian Dollars or Dollars to the Canadian Borrower out of the Canadian Agent s own funds unless the funding is specifically required to be made by all Canadian Lenders hereunder; so long as, after giving effect to such Swingline Loan, the Dollar Equivalent of all outstanding Swingline Loans does not exceed the Swingline Loan Subline. Each Swingline Loan for the account of the Canadian Borrower shall constitute a Base Rate Revolver Loan or a Canadian Prime Rate Loan for all purposes, except that payments thereon (including interest thereon) shall be made to the Canadian Agent for its own account. The obligation of the Canadian Borrower to repay Swingline Loans shall be evidenced by the records of Canadian Agent and need not be evidenced by any promissory note. Any notice from the Canadian Borrower requesting a Swingline Loan must be received by the Canadian Agent no later than 1:00 p.m. on the Business Day of the requested funding date. Any Swingline Loan requested by the Canadian Borrower shall be in a minimum amount of $25,000 in the case of a Base Rate Revolver Loan or Cdn. $25,000 in the case of a Canadian Prime Rate Loan.

(b) To facilitate administration of the Loans, the Revolver Lenders and Agents agree (which agreement is solely among them, and not for the benefit of or enforceable by any Borrower) that settlement among them with respect to Swingline Loans and other Revolver Loans may take place periodically on a date determined from time to time by the Applicable Agent, which shall occur at least on a weekly basis. On each settlement date, settlement shall be made with each Revolver Lender in accordance with the Settlement Report delivered by the Applicable Agent to the Revolver Lenders. Between settlement dates, the Administrative Agent may in its discretion apply payments on US Revolver Loans to Swingline Loans for the account of the US Borrower and the Canadian Agent may apply payments on Canadian Revolver Loans to Swingline Loans for the account of the Canadian Borrower, regardless of any designation by the Borrowers or any provision herein to the contrary. Each Revolver Lender s obligation to make settlements with the Applicable Agent is absolute and unconditional, without offset, counterclaim or other defense, and whether or not the US Revolver Commitments or Canadian Revolver Commitments have terminated, a US Revolver Overadvance or a Canadian Revolver Overadvance exists, or the conditions in **Section 6** are satisfied. If, due to an Insolvency Proceeding with respect to the US Borrower or otherwise, any Swingline Loan for the account of the US Borrower may not be settled among the US Revolver Lenders hereunder, then each US Revolver Lender shall be deemed to have purchased from the Administrative Agent a Pro Rata participation in each such unpaid Swingline Loan and shall transfer the amount of such participation to the Administrative Agent, in immediately available funds, within one Business Day after the Administrative Agent s request therefor. If, due to an Insolvency Proceeding with respect to the Canadian Borrower or otherwise, any Swingline Loan for the account of the Canadian Borrower may not be settled among the Canadian Revolver Lenders hereunder, then each Canadian Revolver Lender shall be deemed to have purchased from the Canadian Agent a Pro Rata participation in each such unpaid Swingline Loan and shall transfer the amount of such participation to the Canadian Agent, in immediately available funds, within one Business Day after the Administrative Agent s request therefor.

4.1.4. **Notices**. Each Borrower authorizes the Applicable Agent and the Lenders to extend, convert or continue Loans, effect selections of interest rates, and transfer funds to or on behalf of the Borrowers based on telephonic or other e-mailed, electronic or internet-based instructions in form, in each case, acceptable to the Administrative Agent and the Borrowers. The Borrowers shall confirm each such request by prompt delivery to the Administrative Agent of a Notice of Borrowing or Notice of Conversion/Continuation, if applicable, but if it differs in any material respect from the action taken by the Applicable Agent or the

applicable Lenders, the records of the Applicable Agent and such Lenders shall govern. Neither any Agent nor any Lender shall have any liability for any loss suffered by a Borrower as a result of any Agent or any Lender acting upon its understanding of telephonic or other e-mailed, electronic or internet-based instructions in form, in each case, reasonably acceptable to the Applicable Agent and the Borrowers, from a person believed in good faith by any Agent or any Lender to be a person authorized to give such instructions on a Borrower s behalf.

4.2. Defaulting Lender. If a Lender fails to make any payment to the Applicable Agent that is required hereunder (a Defaulting Lender), the Applicable Agent may (but shall not be required to), in its discretion, retain payments that would otherwise be made to such Defaulting Lender hereunder, apply the payments to such Lender s defaulted obligations or readvance the funds to the Borrowers in accordance with this Agreement. The failure of any Lender to fund a Loan or to make a payment in respect of a US LC Obligation or Canadian LC Obligation shall not relieve any other Lender of its obligations hereunder, and no Lender shall be responsible for default by another Lender. The Lenders and the Agents agree (which agreement is solely among them, and not for the benefit of or enforceable by any Borrower) that, solely for purposes of determining a Defaulting Lender s right to vote on matters relating to the Loan Documents and to share in payments, fees and Collateral proceeds thereunder, a Defaulting Lender shall not be deemed to be a Lender until all its defaulted obligations have been cured.

4.3. Number and Amount of LIBOR Loans and Canadian BA Rate Loans; Determination of Rate. For ease of administration, (a) all LIBOR Revolver Loans for the account of the US Borrower having the same length and beginning date of their Interest Periods shall be aggregated together, and such Loans shall be allocated among the US Lenders on a Pro Rata basis, (b) all LIBOR Revolver Loans for the account of the Canadian Borrower having the same length and beginning date of their Interest Periods shall be aggregated together, and such Loans shall be allocated among the Canadian Lenders on a Pro Rata basis; (c) all LIBOR Tranche A-1 Loans having the same length and beginning date of their Interest Periods shall be aggregated together, and such Loans shall be allocated among the Tranche A-1 Lenders on a Pro Rata basis and (d) all Canadian BA Rate Loans having the same length and beginning date of their Interest Periods shall be aggregated together, and such Loans shall be allocated among the Canadian Lenders on a Pro Rata basis. No more than fifteen LIBOR Revolver Loans, LIBOR Tranche A-1 Loans and Canadian BA Rate Loans, in the aggregate, may be outstanding at any time, and (i) each aggregate LIBOR Loan when made, continued or converted shall be in a minimum amount of $500,000, or an increment of $100,000 in excess thereof and (ii) each aggregate Canadian BA Rate Loan when made, continued or converted shall be in a minimum amount of Cdn. $500,000, or an increment of Cdn. $100,000 in excess thereof. Upon determining Adjusted LIBOR or the Canadian BA Rate for any Interest Period requested by the Borrowers, the Applicable Agent shall promptly notify the Borrowers thereof by telephone or electronically and, if requested by the Borrowers, shall confirm any telephonic notice in writing.

4.4. The Borrower Agent. Each Borrower hereby designates the US Borrower (Borrower Agent) as its representative and agent for all purposes under the Loan Documents, including requests for Loans and Letters of Credit, designation of interest rates, delivery or receipt of communications with any Agent, any Issuing Bank or any Lender, preparation and delivery of Borrowing Base Certificates and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with any Agent, any Issuing Bank or any Lender. The Borrower Agent hereby accepts such appointment. The Agents, the Issuing Banks and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by the Borrower Agent on behalf of any Borrower. The Agents, the Issuing Banks and the Lenders may give any notice or communication with a Borrower hereunder to the Borrower Agent on behalf of such Borrower. Agents shall have the

right, in their discretion, to deal exclusively with the Borrower Agent for any or all purposes under the Loan Documents. Each Borrower agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by the Borrower Agent shall be binding upon and enforceable against it.

4.5. Effect of Termination. On the effective date of any termination of the Commitments, all Obligations shall be immediately due and payable, and any Lender may terminate its and its Affiliates Bank Products (including, with the consent of the Administrative Agent, any Cash Management Services). All undertakings of the Borrowers contained in the Loan Documents shall survive any termination, and the Applicable Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents until the Full Payment of the Obligations (including all accrued and unpaid principal, interest and fees, and any other Obligations then due and owing, the payment of any appropriate collateral deposits in connection with other Obligations and the occurrence of the Commitment Termination Date). Notwithstanding such Full Payment of the Obligations (including all accrued and unpaid principal, interest and fees, and any other Obligations then due and owing), the payment of any appropriate collateral deposits in connection with other Obligations and the occurrence of the Commitment Termination Date, no Agent shall be required to terminate its Liens in any Collateral unless, with respect to any damages such Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, such Agent receives (a) a written agreement, executed by the Borrowers and any Person whose advances are used in whole or in part to satisfy the Obligations, indemnifying the Agents, the Issuing Banks and the Lenders from any such damages; or (b) such Cash Collateral as such Agent, in its discretion, deems necessary to protect against any such damages; or (c) such other protections as such Agent in its discretion, deems necessary to protect against any such damages. The provisions of **Sections 2.3, 3.4, 3.6, 3.7, 3.9, 4.5, 5.4, 5.8, 12,** and **14.2**, and the obligation of each Loan Party and the Lender with respect to each indemnity given by it in any Loan Document, shall survive Full Payment of the Obligations and any release relating to this credit facility.

SECTION 5. PAYMENTS

5.1. General Payment Provisions. All payments of Obligations shall be made in Dollars (except as otherwise provided in **Section 5.10**), without condition, offset, counterclaim, recoupment or defense of any kind, free of (and without deduction for) any Taxes, and in immediately available funds, not later than 2:00 p.m. on the due date. Any payment after such time shall be deemed made on the next Business Day. The Borrowers may, at the time of payment, specify to the Applicable Agent the Obligations to which such payment is to be applied, but the Applicable Agent shall in all events retain the right to apply such payment in such manner as the Applicable Agent, subject to the provisions hereof, may determine to be appropriate. If any payment under the Loan Documents shall be stated to be due on a day other than a Business Day, the due date shall be extended to the next Business Day and such extension of time shall be included in any computation of interest and fees. Any payment of a LIBOR Loan or a Canadian BA Rate Loan prior to the end of its Interest Period shall be accompanied by all amounts due under **Section 3.9**. Any prepayment of the US Revolver Loans or Canadian Revolver Loans denominated in Dollars shall be applied first to Base Rate Revolver Loans and then to LIBOR Revolver Loans. Any prepayment of the Tranche A-1 Loans shall be applied first to Base Rate Tranche A-1 Loans and then to LIBOR Tranche A-1 Loans; provided that the Tranche A-1 Loans may only be prepaid following the repayment of the Total Revolver Outstandings in accordance with **Sections 5.5.1, 5.5.2** or **5.5.3**, as applicable. Any prepayment of the Canadian Revolver Loans denominated in Canadian Dollars shall be applied first to Canadian Prime Rate Loans and then to Canadian BA Rate Loans. Unless the Applicable Agent shall have received notice from a Borrower prior to the time at which any payment is due to the Applicable Agent for the account of the Applicable Lenders or the Issuing Banks hereunder that such Borrower will not make such payment, the Applicable Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Applicable Lenders or the applicable Issuing Bank, as the case may be, the

amount due. In such event, if a Borrower has not in fact made such payment, then each of the Applicable Lenders or the applicable Issuing Bank, as the case may be, severally agrees to repay to the Applicable Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Applicable Agent, at the greater of the Federal Funds Rate and a rate determined by the Applicable Agent in accordance with banking industry rules on interbank compensation.

5.2. Repayment of Loans. The Loans and all other Obligations shall be due and payable in full on the Termination Date, unless payment is sooner required hereunder. The US Borrower promises to pay on the Termination Date, or on such earlier date as payment is required hereunder, and there shall become absolutely due and payable on such date, all of the US Revolver Loans, the US LC Obligations and the Tranche A-1 Loans outstanding on such date, together with any and all accrued and unpaid interest thereon and all other fees and other amounts then accrued and outstanding with respect thereto. The Canadian Borrower promises to pay on the Termination Date, or on such earlier date as payment is required hereunder, and there shall become absolutely due and payable on such date, all of the Canadian Revolver Loans and the Canadian LC Obligations outstanding on such date, together with any and all accrued and unpaid interest thereon and all other fees and other amounts then accrued and outstanding with respect thereto. The Loans may be prepaid in accordance with **Section 5.1** and **Section 5.5**; provided that the Tranche A-1 Loans may only be prepaid following the repayment of the Total Revolver Outstandings in accordance with **Sections 5.5.1, 5.5.2** or **5.5.3**, as applicable.

5.3. Payment of Other Obligations. Obligations other than Loans, including US LC Obligations, Canadian LC Obligations and Extraordinary Expenses, shall be paid by the Borrowers as provided in the Loan Documents or, if no payment date is specified, promptly upon receipt by the Borrowers of notice of the amounts due in connection therewith.

5.4. Marshaling; Payments Set Aside. None of the Agents or the Lenders shall be under any obligation to marshal any assets in favor of any Loan Party or against any Obligations. If any Loan Party makes a payment to the Agents or the Lenders, or if any Agent or any Lender receives payment from the proceeds of Collateral, exercise of setoff or otherwise, and such payment is subsequently invalidated or required to be repaid to a trustee, receiver or any other Person, then the Obligations originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been received and any enforcement or setoff had not occurred.

5.5. Allocation of Payments.

5.5.1. Pre-Default Allocation of Payments (US Concentration Account, etc.). Notwithstanding anything herein to the contrary, at all times when no Event of Default has occurred and is continuing, all funds transferred to the US Concentration Account and for which the US Borrower has received credits, together with all payments to be initially applied to the US Obligations, whether arising from payments by the Loan Parties, realization on Collateral, setoff or otherwise, shall be applied to the Obligations as follows:

(a) first, to all costs and expenses, including Extraordinary Expenses constituting US Obligations, owing to the Administrative Agent;

(b) second, to all amounts owing to the Administrative Agent on Swingline Loans advanced to the US Borrower, US Revolver Overadvances or Protective Advances advanced to the US Borrower;

(c) third, to all Obligations constituting fees owing to the US Lenders in their capacity as the US Lenders (excluding amounts relating to Bank Products);

(d) fourth, to all Obligations constituting interest on US Revolver Loans (excluding amounts relating to Bank Products);

(e) fifth, pro rata to all Obligations constituting principal of US Revolver Loans (excluding amounts relating to Bank Products) and to all amounts owing to any Issuing Bank on US LC Obligations;

(f) sixth, to all other Obligations owing to the US Lenders in their capacity as the US Lenders (excluding Bank Product Debt);

(g) seventh, to the Obligations pursuant to clauses (a) through (f) of **Section 5.5.2** below;

(h) eighth, to all costs and expenses, including Extraordinary Expenses constituting Obligations relating to the Tranche A-1 Loans, owing to the Administrative Agent;

(i) ninth, to all Obligations constituting fees owing to the Tranche A-1 Lenders in their capacity as the Tranche A-1 Lenders (excluding amounts relating to Bank Products);

(j) tenth, to all Obligations constituting interest on Tranche A-1 Loans (excluding amounts relating to Bank Products);

(k) eleventh, to all Obligations constituting principal of Tranche A-1 Loans (excluding amounts relating to Bank Products);

(l) twelfth, to all other Obligations owing to the Tranche A-1 Lenders in their capacity as the Tranche A-1 Lenders (excluding amounts relating to Bank Products);

(m) thirteenth, to Bank Product Debt constituting Obligations owing to the Lenders and their Affiliates for which a Bank Product Reserve has been established; and

(n) fourteenth, to Bank Product Debt constituting Obligations owing to the Lenders and their Affiliates for which a Bank Product Reserve has not been established.

Amounts shall be applied to each category of Obligations set forth above until the payment in full thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. Amounts distributed with respect to any Bank Product Debt, US LC Obligations or Canadian LC Obligations shall be the lesser of the applicable US LC Obligations, Canadian LC Obligations or Bank Product Amount last reported to the Agents or the actual US LC Obligations, Canadian LC Obligations or Bank Product Debt as calculated by the methodology reported to the Agents for determining the amount due. The Agents shall have no obligation to calculate the amount to be distributed with respect to any Bank Product Debt, but may rely upon written notice of the amount (setting forth a reasonably detailed calculation) from the Secured Party. In the absence of such notice, the Agents may assume the amount to be distributed is the Bank Product Amount last reported to

it. The allocations set forth in this **Section 5.5.1** are solely to determine the rights and priorities of the Agents and the Lenders as among themselves, and may be changed by agreement among them without the consent of any Loan Party.

5.5.2. Pre-Default Allocation of Payments (Canadian Concentration Account, etc.). Notwithstanding anything herein to the contrary, at all times when no Event of Default has occurred and is continuing, all funds transferred to the Canadian Concentration Account and for which the Canadian Borrower has received credits, together with all payments to be initially applied to the Canadian Obligations, whether arising from payments by the Loan Parties, realization on Collateral, setoff or otherwise, shall be applied to the Obligations as follows:

(a) first, to all costs and expenses, including Extraordinary Expenses constituting Canadian Obligations, owing to the Canadian Agent;

(b) second, to all amounts owing to the Canadian Agent on Swingline Loans advanced to the Canadian Borrower, Canadian Revolver Overadvances or Protective Advances advanced to the Canadian Borrower;

(c) third, to all Obligations constituting fees owing to the Canadian Lenders in their capacity as the Canadian Lenders (excluding amounts relating to Bank Products);

(d) fourth, to all Obligations constituting interest on the Canadian Revolver Loans (excluding amounts relating to Bank Products);

(e) fifth, pro rata to all Obligations constituting principal of the Canadian Revolver Loans (excluding amounts relating to Bank Products) and to all amounts owing to any Issuing Bank on Canadian LC Obligations;

(f) sixth, to all other Obligations owing to the Canadian Lenders in their capacity as the Canadian Lenders (excluding amounts relating to Bank Products); and

(g) seventh, to the Obligations pursuant to clauses (a) through (n) of **Section 5.5.1** above (other than in respect of clause (g) of such **Section 5.5.1**).

Amounts shall be applied to each category of Obligations set forth above until the payment in full thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. Amounts distributed with respect to any Bank Product Debt, US LC Obligations or Canadian LC Obligations shall be the lesser of the applicable US LC Obligations, Canadian LC Obligations or Bank Product Amount last reported to the Agents or the actual US LC Obligations, Canadian LC Obligations or Bank Product Debt as calculated by the methodology reported to the Agents for determining the amount due. The Agents shall have no obligation to calculate the amount to be distributed with respect to any Bank Product Debt, but may rely upon written notice of the amount (setting forth a reasonably detailed calculation) from the Secured Party. In the absence of such notice, the Agents may assume the amount to be distributed is the Bank Product Amount last reported to it. The allocations set forth in this **Section 5.5.2** are solely to determine the rights and priorities of the Agents and the Lenders as among themselves, and may be changed by agreement among them without the consent of any Loan Party.

5.5.3. Post-Default Allocation of Payments. Notwithstanding anything herein to the contrary (but subject to the Intercreditor Agreement), during an Event of Default, monies received by the Administrative Agent, the Canadian Agent or any Lender, whether arising from payments by the Loan Parties, realization on Collateral, setoff or otherwise, shall be allocated as follows:

(a) first, to all costs and expenses, including Extraordinary Expenses, owing to the Agents;

(b) second, to all amounts owing to the Agents on Swingline Loans, US Revolver Overadvances, Canadian Revolver Overadvances or Protective Advances;

(c) third, to all Obligations constituting fees owing to the Revolver Lenders in their capacity as the Revolver Lenders (excluding amounts relating to Bank Products;

(d) fourth, to all Obligations constituting interest on Revolver Loans (excluding amounts relating to Bank Products);

(e) fifth, to all Obligations constituting principal of Revolver Loans (excluding amounts relating to Bank Products), to all amounts owing to the Issuing Banks on US LC Obligations and Canadian LC Obligations and to provide Cash Collateral for outstanding Letters of Credit;

(f) sixth, to all other Obligations owing to the Revolver Lenders in their capacity as the Revolver Lenders (other than Bank Product Debt);

(g) seventh, to all costs and expenses, including Extraordinary Expenses constituting Obligations relating to the Tranche A-1 Loans, owing to the Administrative Agent;

(h) eighth, to all Obligations constituting fees owing to the Tranche A-1 Lenders in their capacity as the Tranche A-1 Lenders (excluding amounts relating to Bank Products);

(i) ninth, to all Obligations constituting interest on Tranche A-1 Loans (excluding amounts relating to Bank Products);

(j) tenth, to all Obligations constituting principal of Tranche A-1 Loans (excluding amounts relating to Bank Products);

(k) eleventh, to all other Obligations owing to the Tranche A-1 Lenders in their capacity as the Tranche A-1 Lenders (excluding amounts relating to Bank Products);

(l) twelfth, to Bank Product Debt constituting Obligations owing to the Lenders and their Affiliates for which a Bank Product Reserve has been established;

(m) thirteenth, to Bank Product Debt constituting Obligations owing to the Lenders and their Affiliates for which a Bank Product Reserve has not been established; and

(n) fourteenth, to all other Obligations.

Amounts shall be applied to each category of Obligations set forth above until the payment in full thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. Amounts distributed with respect to any Bank Product Debt, US LC Obligations or Canadian LC Obligations shall be the lesser of the applicable US LC Obligations, Canadian LC Obligations or Bank Product Amount last reported to the Agents or the actual US LC Obligations, Canadian LC Obligations or Bank Product Debt as calculated by the methodology reported to the Agents

for determining the amount due. The Agents shall have no obligation to calculate the amount to be distributed with respect to any Bank Product Debt, but may rely upon written notice of the amount (setting forth a reasonably detailed calculation) from the Secured Party. In the absence of such notice, the Agents may assume the amount to be distributed is the Bank Product Amount last reported to it. The allocations set forth in this **Section 5.5.3** are solely to determine the rights and priorities of the Agents and the Lenders as among themselves, and may be changed by agreement among them without the consent of any Loan Party. This **Section 5.5.3** is not for the benefit of or enforceable by any Loan Party.

5.5.4. Erroneous Application. No Agent shall be liable for any application of amounts made by it in error (unless it has been determined in a final, non-appealable judgment by a court of competent jurisdiction that such error was a result of the gross negligence or willful misconduct of such Agent) and if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been made (unless it has been determined in a final, non-appealable judgment by a court of competent jurisdiction that such error was a result of the gross negligence or willful misconduct of such Agent) shall be to recover the amount from the Person that actually received it (and, if such amount was received by any Lender, such Lender hereby agrees to return it).

5.6. Application of Payments. All funds and cash proceeds in the form of money, checks and like items received in the Concentration Accounts shall be credited, on the next Business Day on which the Agents determines that good collected funds have been received, and, prior to the receipt of good collected funds, on a provisional basis until final receipt of good collected funds, and applied as contemplated by **Section 5.5**. All funds and cash proceeds in the form of a wire transfer received in the Concentration Accounts shall be credited on the next Business Day following the Applicable Agent s receipt of such amounts (or up to such later date as the Agents determine that good collected funds have been received), and applied as contemplated by **Section 5.5**. All funds and cash proceeds in the form of an automated clearing house transfer received in the Concentration Accounts shall be credited, on the next Business Day following the Applicable Agent s receipt of such amounts (or up to such later date as the Administrative Agent determines that good collected funds have been received), and applied as contemplated by **Section 5.5**. For purposes of the foregoing provisions of this **Section 5.6**, the Applicable Agent shall not be deemed to have received any such funds or cash proceeds on any day unless received by the Applicable Agent before 2:00 p.m. (Boston time) on such day. The Borrowers further acknowledge and agree that any such provisional credits or credits in respect of wire or automatic clearing house funds transfers shall be subject to reversal if final collection in good funds of the related item is not received by, or final settlement of the funds transfer is not made in favor of, the Applicable Agent in accordance with the Applicable Agent s customary procedures and practices for collecting provisional items or receiving settlement of funds transfers.

5.7. Loan Account; Account Stated.

5.7.1. Loan Account. The Applicable Agent shall maintain in accordance with its usual and customary practices an account or accounts (Loan Account) evidencing the Debt of the Borrowers resulting from each Loan or issuance of a Letter of Credit from time to time. Any failure of any Agent to record anything in the Loan Account, or any error in doing so, shall not limit or otherwise affect the obligation of the Borrowers to pay any amount owing hereunder. The Agents may maintain a single Loan Account in the name of the Borrower Agent.

5.7.2. Entries Binding. Entries made in the Loan Account shall constitute presumptive evidence of the information contained therein. If any information contained in the Loan Account is provided to or inspected by any Person, then such information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies the Applicable Agent in writing within 30 days after receipt or inspection that specific information is subject to dispute.

5.8. Taxes.

5.8.1. Generally. If any Taxes (except Excluded Taxes) shall be payable by any party due to the execution, delivery, issuance or recording of any Loan Documents, or the creation or repayment of any Obligations, the Borrowers shall pay (and shall promptly reimburse the Agents and the Lenders for their payment of) all such Taxes, including any interest and penalties thereon, and will indemnify and hold harmless Indemnitees against all liability in connection therewith.

5.8.2. Withholding Taxes. All payments to the Agent or the Lenders (or any successor or assignee thereof) by a Loan Party under this Agreement or any other Loan Document shall be made free and clear of and without deduction or withholding for any and all Taxes (other than Excluded Taxes) unless required by Applicable Law. If any Loan Party shall be required by Applicable Law to withhold or deduct any Taxes (except Excluded Taxes) with respect to any sum payable under any Loan Documents, (a) the sum payable to such Agent or such Lender shall be increased as may be necessary so that, after making all required withholding or deductions (including withholding or deduction applicable to additional amounts paid under this **Section 5.8.2**), such Agent or such Lender (as the case may be) receives an amount equal to the sum it would have received had no such withholding or deductions been made; (b) such Loan Party shall make such withholding or deductions; and (c) such Loan Party shall pay the full amount withheld or deducted to the relevant taxing or other authority in accordance with Applicable Law.

5.8.3. Indemnity. Each Loan Party shall indemnify and hold harmless each of the Lenders and each Agent for the full amount of Taxes (other than Excluded Taxes) imposed on or paid by such Lender or such Agent and any liability (including penalties, interest and expenses payable or incurred in connection therewith) arising from or with respect to such Taxes, whether or not they were correctly or legally asserted. Payment under this indemnification shall be made within 30 days from the date the relevant Agent or the relevant Lender, as the case may be, makes written demand for it. A certificate containing reasonable detail as to the amount of such Taxes submitted to the relevant Loan Party by the relevant Agent or the relevant Lender shall be conclusive evidence, absent manifest error, of the amount due from such Borrower to such Agent or such Lender, as the case may be.

5.8.4. [Reserved]

5.8.5. Survival. Notwithstanding anything contained herein to the contrary, the provisions of this **Section 5.8** shall survive the expiration or termination of this Agreement and the other Loan Documents.

5.9. Withholding Tax Exemption. At least five Business Days prior to the first date for payment of interest or fees hereunder to a Foreign Lender, the Foreign Lender shall, if applicable, deliver to the Borrowers and the Agents two duly completed copies of IRS Form W-8BEN or W-8ECI (or any subsequent replacement or substitute form therefor), certifying that such Lender can receive payment of Obligations without deduction or withholding of any United States federal income taxes. Each Foreign Lender shall deliver to the Borrowers and the Agents two additional copies of such form before the preceding form expires or becomes obsolete or after the occurrence of any event requiring a change in the form, as well as any amendments, extensions or renewals thereof as may be reasonably requested by the Borrowers or the Agents, in each case, certifying that the Foreign Lender can receive payment of Obligations without deduction or withholding of any such taxes, unless an event (including any change in treaty or law) has occurred that renders such forms inapplicable or prevents the Foreign Lender from certifying that it can receive payments without deduction or

withholding of such taxes. During any period that a Foreign Lender does not or is unable to establish that it can receive payments without deduction or withholding of such taxes, other than by reason of an event (including any change in treaty or law) that occurs after it becomes a Lender, the Applicable Agent may withhold taxes from payments to such Foreign Lender at the applicable statutory and treaty rates, and the Borrowers shall not be required to pay any additional amounts under **Section 5.8** or this **Section 5.9** as a result of such withholding. Each Lender or the Agent that is organized under the laws of the United States, or any state or district thereof shall provide to the US Borrower (and in the case of a Lender, to the Applicable Agent) two duly executed copies of IRS Form W-9. In the event that any Lender or any Agent does not comply with the requirements of this **Section 5.9**, the relevant Borrower may withhold taxes from payments to such Lender or such Agent as required by Applicable Law. In the event of the resignation of the Applicable Agent pursuant to **Section 12.8** hereunder, the successor Applicable Agent shall be subject to the provisions of this **Section 5.9** in the same manner as a its predecessor Applicable Agent, and shall be required to provide the appropriate IRS Form W-8BEN or W-8ECI to the US Borrower as required in this **Section 5.9**. In the event that the successor Applicable Agent does not comply with the requirements of this **Section 5.9**, the Borrowers may withhold taxes from payments to such successor Applicable Agent as required by Applicable Law.

5.10. Currency Matters. Dollars are the currency of account and payment for each and every sum at any time due from the Borrowers hereunder; provided that:

(a) except as expressly provided in this Agreement, each repayment of a Loan or a part thereof shall be made in the currency in which such Loan is denominated at the time of that repayment;

(b) each payment of interest shall be made in the currency in which such principal or other sum in respect of which such interest is payable, is denominated;

(c) each payment of any Letter of Credit Fees payable by the US Borrower (and any other fees payable by the US Borrower under **Section 3.2.2**), Unused Fees payable by the US Borrower and all other amounts due hereunder (unless the provisions of the Agreement require otherwise) shall be in Dollars;

(d) each (i) payment of any Letter of Credit Fees payable by the Canadian Borrower in respect of Letters of Credit denominated in Canadian Dollars (and any other fees payable by the Canadian Borrower under **Section 3.2.2** in respect thereof) shall be in Canadian Dollars and (ii) payment of any Letter of Credit Fees payable by the Canadian Borrower in respect of Letters of Credit denominated in Dollars (and any other fees payable by the Canadian Borrower under **Section 3.2.2** in respect thereof) shall be in Dollars;

(e) each payment in respect of costs, expenses and indemnities shall be made in the currency in which the same were incurred; and

(f) any amount expressed to be payable in Canadian Dollars shall be paid in Canadian Dollars.

No payment to any Agent or any Lender (whether under any judgment or court order or otherwise) shall discharge the obligation or liability in respect of which it was made unless and until such Agent or such Lender shall have received payment in full in the currency in which such obligation or liability was incurred, and to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability actual or contingent expressed in that currency, each Borrower

agrees to indemnify and hold harmless such Agent or such Lender, as the case may be, with respect to the amount of the shortfall with respect to amounts payable by such Borrower hereunder, with such indemnity surviving the termination of this Agreement and any legal proceeding, judgment or court order pursuant to which the original payment was made which resulted in the shortfall.

SECTION 6. CONDITIONS PRECEDENT

6.1. Conditions Precedent to Effectiveness of this Agreement. In addition to the conditions set forth in **Section 6.2**, the Agreement shall not be effective and the Lenders shall not be required to fund any requested Loan, issue any Letter of Credit, or otherwise extend credit to the Borrowers hereunder until the date (Closing Date) that each of the following conditions has been satisfied (in each case, in form and substance satisfactory to the Agents and each of the Lenders), unless the Administrative Agent, in its sole discretion, determines that the satisfaction of one or more of the following conditions precedent may be satisfied on a post-closing basis pursuant to the Post-Closing Agreement:

(a) Notes shall have been executed by the Borrowers and delivered to each Lender that requests issuance of a Note. Each other Loan Document shall have been duly executed and delivered to the Administrative Agent by each of the signatories thereto, and each Loan Party shall be in compliance with all terms thereof.

(b) The Agents shall be satisfied that the Security Documents shall be effective to create in favor of the Applicable Agent a legal, valid and enforceable first priority security interest in and Lien upon the Collateral and shall have received (i) evidence that all filings, recordings, deliveries of instruments and other actions necessary or desirable in the commercially reasonable opinion of the Agents to protect and preserve such security interests shall have been duly effected, (ii) UCC, PPSA and Lien searches (and the equivalent thereof in all applicable foreign jurisdictions) and other evidence reasonably satisfactory to the Agents that such Liens are the only Liens upon the Collateral, except Permitted Liens, (iii) evidence that the payment (or evidence of provision for payment) of all filing and recording fees and taxes due and payable in respect thereof has been made in form and substance reasonably satisfactory to the Administrative Agent, (iv) all Lien Waivers and Lien Priority Agreements necessary or desirable in the reasonable opinion of the Administrative Agent, and (v) a completed and fully executed information certificate with respect to each Loan Party substantially in the form of **Exhibit G** hereto.

(c) The Administrative Agent shall have received executed copies of the Term Loan Documents, the Brinkhaus Subordinated Debt Documents, the Rhode Island Debt Documents, the Quebec Subordinated Debt Documents, the Rolex Documents and the Management Agreement, certified by a Senior Officer of the Borrowers as complete and correct (with such certification to be in such Person s capacity a Senior Officer of the Borrowers and not in such Person s individual capacity), and the Administrative Agent shall be satisfied with the terms and conditions and provisions thereof, which documents shall be in full force and effect and without amendment except attached thereto.

(d) (i) Each Applicable Agent shall have received duly executed Deposit Account Control Agreements with respect to each Deposit Account of the Borrowers constituting a Concentration Account (other than in respect of the accounts maintained at Royal Bank of Canada and Bank of Montreal) or into which credit card receivables are deposited, each in form and substance, and with financial institutions, satisfactory to the Administrative Agent; and (ii) the Canadian Agent shall have received duly executed estoppel letters with respect to consignment filings on record in any province in Canada.

(e) The Administrative Agent shall have received a certificate, in form and substance reasonably satisfactory to it, from a Senior Officer of each Borrower (with such certification to be in such Person s capacity as a Senior Officer of such Borrower and not in such Person s individual capacity) certifying that:

(i) after giving effect to the Loans and transactions hereunder and under the Term Loan Documents, (A) each Loan Party is Solvent; (B) no Default or Event of Default exists; (C) the representations and warranties set forth in **Section 9** are true and correct in all material respects; and (D) each Loan Party has complied in all material respects with all agreements and conditions to be satisfied by it under the Loan Documents;

(ii) there is no action, suit, investigation or proceeding pending or, to the knowledge of the Loan Parties, threatened in any court or before any arbitrator or governmental authority that could reasonably be expected to have a Material Adverse Effect;

(iii) all Loans made by the Lenders to the Borrowers hereunder are and shall remain in full compliance with the Federal Reserve s margin regulations and other similar Applicable Laws;

(iv) no law or regulation to which any Loan Party is subject is applicable to the transactions contemplated hereby which could reasonably be expected to have a Material Adverse Effect on any Loan Party or a Material Adverse Effect on the transactions contemplated hereby;

(v) no Material Adverse Effect shall have occurred since September 27, 2008; and

(vi) contemporaneously with the effectiveness of this Agreement, the transactions contemplated by the Term Loan Documents shall have been consummated and the Borrowers shall have received not less than $13,000,000 gross cash proceeds therefrom.

(f) The Administrative Agent shall have received a certificate of a duly authorized officer of each Loan Party (with such certification to be in such Person s capacity as an officer of such Loan Party and not in such Person s individual capacity), certifying (i) that attached copies of such Loan Party s Organizational Documents are true and complete, and in full force and effect, without amendment except as shown, (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility, and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents. The Administrative Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Loan Party in writing.

(g) Each of the Lenders and the Agents shall have received favorable legal opinions addressed to the Lenders and the Agents, dated as of the Closing Date, in form and substance reasonably satisfactory to the Lenders and the Agents, from (i) Holland & Knight LLP, US counsel to the Borrowers and their Subsidiaries; (ii) Edwards Angell Palmer & Dodge LLP, local Rhode Island counsel to Henry Birks & Sons U.S., Inc., (iii) Stikeman Elliott LLP, Canadian counsel to the Borrowers and their Subsidiaries; and (iv) local Canadian counsel to the Borrowers and their Subsidiaries with respect to filing and perfection matters in the applicable provinces and territories of Canada.

(h) The Administrative Agent shall have received copies of the charter documents of each Loan Party, certified as appropriate by the Secretary of State or other appropriate official of such Loan Party s jurisdiction of organization. The Administrative Agent shall have received good standing or subsistence certificates, as applicable, for each Loan Party, issued by the Secretary of State or other appropriate official of such Loan Party s jurisdiction of organization dated as of a recent date.

(i) The Administrative Agent shall (i) be reasonably satisfied with the amount, types and terms and conditions of all insurance maintained by the Loan Parties and their Subsidiaries, and (ii) have received certificates of insurance identifying insurers, types of insurance, insurance limits and policy terms and with endorsements naming the Applicable Agent, for the benefit of the Lenders, as lender s loss payee or additional insured, as applicable, with respect to each insurance policy required to be maintained with respect to the Collateral and otherwise in form and substance reasonably satisfactory to the Administrative Agent.

(j) The Administrative Agent shall have completed its business, financial and legal due diligence of the Loan Parties, with results reasonably satisfactory to the Administrative Agent and the Administrative Agent shall be satisfied that no Material Adverse Effect shall have occurred since September 27, 2008.

(k) The Borrowers shall have paid all fees and expenses to be paid to the Agents and the Lenders on the Closing Date (including, without limitation, all fees, charges and disbursements of counsel, including local counsel, to the Agents to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Agents)).

(l) The Borrowers shall have consummated the transactions contemplated by the Term Loan Documents (including any amendments thereof) and such documents shall be in full force and effect.

(m) The Administrative Agent shall have received duly executed copies of each Subordination Agreement (other than the Quebec Subordination Agreement in respect of the Quebec New Subordinated Debt and the Quebec Existing Subordinated Debt) and the Intercreditor Agreement, each of which shall be in form and substance satisfactory to the Administrative Agent and which shall be in full force and effect.

(n) The Administrative Agent shall have received all inventory and asset appraisals, commercial finance audits, field audits and such other reports, audits and other information or certifications with respect to the Collateral as required herein.

(o) The Administrative Agent shall have received a flow of funds, in form and substance satisfactory to the Administrative Agent.

(p) The Administrative Agent shall have received copies of agreements, instructing each credit card processor of the Loan Parties to transfer all amounts owing to a Loan Party by such credit card processor directly to the applicable Concentration Account, with (x) such agreements (each, a Credit Card Agreement) to be in form and substance acceptable to the Administrative Agent, and (y) such agreements to be executed by each relevant Loan Party and the relevant credit card processor, unless otherwise waived by the Administrative Agent.

(q) The Administrative Agent shall have received a Borrowing Base Certificate indicating that Aggregate Excess Availability as of the Closing Date, after giving effect to the transactions contemplated hereby (including all Loans and Letters of Credit to be issued on the Closing Date), and by the Term Loan Documents, is not less than $20,000,000.

(r) The Administrative Agent shall have received a certificate of a duly authorized officer of each Loan Party (with such certification to be in such Person s capacity as an officer of such Loan Party and not in such Person s individual capacity), either (i) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (ii) stating that no such consents, licenses or approvals are so required.

(s) The Administrative Agent shall have received (i) the audited financial statements of the Borrowers for the Fiscal Year ended on March 29, 2008, (ii) the unaudited financial statements of the Borrowers for the Fiscal Quarter ended September 27, 2008 and (iii) forecasts prepared by management of the Borrowers of balance sheets, income statements and cash flow statements of the Borrowers on a monthly basis for the current Fiscal Year and for the Fiscal Year thereafter.

6.2. Conditions Precedent to All Credit Extensions. The Agents, the Issuing Bank and the Lenders shall not be required to fund any Loans, arrange for issuance of any Letters of Credit or grant any other accommodation to or for the benefit of the Borrowers, unless the following conditions are satisfied:

(a) The Applicable Agent shall have received (i) with respect to any requested funding of any Loan, a Notice of Borrowing in accordance with **Section 4.1.1** or (ii) with respect to any requested issuance of a Letter of Credit, an LC Application and such other related documents in accordance with **Section 2.3**;

(b) No Default or Event of Default shall exist at the time of, or result from, such funding, issuance or grant;

(c) The representations and warranties of each Loan Party in the Loan Documents shall be true and correct in all material respects on the date of, and upon giving effect to, such funding, issuance or grant (except for representations and warranties that expressly relate to an earlier date and except for changes therein which do not cause a violation of this Agreement);

(d) All conditions precedent in any other Loan Document shall be satisfied;

(e) No event shall have occurred or circumstance exist that has or could reasonably be expected to have a Material Adverse Effect;

(f) With respect to issuance of a Letter of Credit, the US LC Conditions or the Canadian LC Conditions, as applicable, shall be satisfied;

(g) No change shall have occurred in any law or regulations thereunder or interpretations thereof (including currency exchange laws, rules or regulations) that in the reasonable opinion of any Lender would make it illegal or impractical for such Lender to make such Loan or to participate in the issuance, extension or renewal of such Letter of Credit or in the reasonable opinion of the Applicable Agent would make it illegal or impractical for the applicable Issuing Bank to issue, extend or renew such Letter of Credit; and

(h) Solely with respect to a request of Canadian Revolver Loans or a request for a Letter of Credit to be issued for the account or benefit of the Canadian Borrower, no request by Canada Revenue Agency for payment pursuant to Section 224(1.1) or any successor section of the ITA or any comparable provision of any other taxing statute shall have been received by any Person in respect of the Borrowers.

Each request (or deemed request) by the Borrowers for funding of a Loan, issuance of a Letter of Credit or grant of an accommodation shall constitute a representation by the Borrowers that the foregoing conditions are satisfied on the date of such request and on the date of such funding, issuance or grant.

6.3. Limited Waiver of Conditions Precedent. If the Agents, the Issuing Banks or the Lenders fund any Loans, arrange for issuance of any Letters of Credit or grant any other accommodation when any conditions precedent are not satisfied (regardless of whether the lack of satisfaction was known or unknown at the time), it shall not operate as a waiver of (a) the right of the Agents, the Issuing Banks and the Lenders to insist upon satisfaction of all conditions precedent with respect to any subsequent funding, issuance or grant; nor (b) any Default or Event of Default due to such failure of conditions or otherwise.

SECTION 7. COLLATERAL SECURITY AND GUARANTEES

7.1. Grant of Security Interest. To secure the prompt payment and performance of all Obligations, each Loan Party hereby grants to the Applicable Agent, for the benefit of the Secured Parties, a continuing security interest in and Lien upon all Property of such Loan Party, including all of the following Property, whether now owned or hereafter acquired, and wherever located:

(a) all Accounts;

(b) all Chattel Paper, including electronic chattel paper;

(c) all Commercial Tort Claims, including, without limitation those Commercial Tort Claims identified on **Schedule 7.1** (as such Schedule may be updated by the Administrative Agent from time to time);

(d) all Deposit Accounts;

(e) all Documents;

(f) all General Intangibles, including Payment Intangibles, Software and Intellectual Property;

(g) all Goods, including Inventory, Equipment and Fixtures;

(h) all Instruments;

(i) all Investment Property;

(j) all Letter-of-Credit Rights;

(k) all Supporting Obligations;

(l) all monies, whether or not in the possession or under the control of an Agent, a Lender, or a bailee or Affiliate of an Agent or a Lender, including any Cash Collateral;

(m) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and

(n) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing.

7.2. Deposit Accounts; Cash Collateral; Credit Card Agreements.

7.2.1. Bank Accounts.

(a) To further secure the prompt payment and performance of all Obligations, each Loan Party hereby grants to the Applicable Agent, for the benefit of the Secured Parties, a continuing security interest in and Lien upon all of such Loan Party s right, title and interest in and to each Deposit Account of such Loan Party and any deposits or other sums at any time credited to any such Deposit Account, including any sums in any blocked or lockbox accounts or in any accounts into which such sums are swept. Each Loan Party authorizes and directs each bank or other depository to deliver, on a daily basis and pursuant to the Applicable Agent s instructions, all balances in each Deposit Account (other than an Exempt Deposit Account) maintained by such Loan Party with such depository for application to the Obligations in accordance with **Section 5.5**. Each Loan Party irrevocably appoints the Applicable Agent as such Loan Party s attorney-in-fact to collect such balances to the extent any such delivery is not so made.

(b) The Borrowers shall (i) at all times maintain the Concentration Accounts and (ii) request in writing and otherwise take all reasonable steps to ensure that (A) all collections (including, without limitation, all Payment Items), together with any and all other proceeds received by any Loan Party (including, without limitation, proceeds received by any Loan Party in connection with an issuance of Debt or Capital Stock, insurance proceeds, proceeds of sales and tax refunds) are made directly to the applicable Concentration Account or a Dominion Account and (B) all balances in each Deposit Account (other than a Deposit Account constituting the Concentration Account) are transferred daily to the applicable Concentration Account. If any Borrower or Subsidiary receives cash or Payment Items with respect to any Collateral or any other proceeds described in this paragraph, it shall hold same in trust for the Applicable Agent and promptly (not later than the next Business Day) deposit same into the applicable Concentration Account. All balances in the Concentration Accounts shall be applied to the Obligations pursuant to **Section 5.5.** Notwithstanding anything to the contrary contained herein, the parties acknowledge that, as of the Closing Date, the Deposit Accounts maintained at Royal Bank of Canada and Bank of Montreal are not subject to a Deposit Account Control Agreement; however, upon the request of the Administrative Agent, the Loan Parties shall use commercially reasonable efforts to enter into a Deposit Account Control Agreement over such Deposit Accounts or shall close such accounts.

(c) **Schedule 7.2.1** sets forth the account numbers and locations of all Deposit Accounts (and related lockbox arrangements) of each Loan Party as of the Closing Date. Each Loan Party shall be the sole account holder of each Deposit Account and shall not allow any other Person (other than Applicable Agent and, subject to the Intercreditor Agreement, the Term Loan Agent) to have control over a Deposit Account. Contemporaneously with the delivery of quarterly financial statements, each Loan Party shall notify the Administrative Agent of any opening or closing of a Deposit Account since the last such report (or, in the case of the first such report, since the Closing Date) and will provide an updated **Schedule 7.2.1** to reflect same.

(d) Each Concentration Account, each Dominion Account and each other Deposit Account into which Accounts from credit card processors are deposited and, following the occurrence and during the continuance of an Event of Default, at the request of the Applicable Agent, any other Deposit Account (other than Exempt Deposit Accounts) shall be subject to control arrangements or lockbox or other arrangements reasonably acceptable to the Agents. Neither the Agents nor the Lenders assume any responsibility to any Loan Party for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

(e) No Loan Party shall, or shall cause or permit any Subsidiary to accumulate or maintain cash in a disbursement account or payroll account, as of any date of determination, in excess of checks outstanding against such account as of that date and amount necessary to meet minimum balance requirements.

7.2.2. Cash Collateral. Any Cash Collateral may be invested, in each Applicable Agent s discretion, in Cash Equivalents, but no Agent shall have any duty to do so, regardless of any agreement, understanding or course of dealing with any Loan Party, and shall have no responsibility for any investment or loss. Each Loan Party hereby grants to the Applicable Agent, for the benefit of the Secured Parties, a security interest in and Lien upon all Cash Collateral held from time to time and all proceeds thereof, as security for the Obligations, whether such Cash Collateral is held in the Cash Collateral Account or elsewhere. The Applicable Agent may apply Cash Collateral to the payment of any Obligations in accordance with **Section 5.5**. The Cash Collateral Account and all Cash Collateral shall be under the sole dominion and control of the Applicable Agent. No Loan Party or other Person claiming through or on behalf of any Loan Party shall have any right to any Cash Collateral, until Full Payment of all Obligations.

7.2.3. Credit Card Arrangements. **Schedule 7.2.3** sets forth all arrangements to which any Loan Party is a party as of the Closing Date with respect to the payment to any Loan Party of the proceeds of credit card charges for sales by such Loan Party. The Loan Parties shall deliver to the Applicable Agent Credit Card Agreements instructing each of their credit card processors to transfer all amounts owing by such processor to a Loan Party directly to the applicable Concentration Account, with such Credit Card Agreements to be executed by each relevant Loan Party and the applicable credit card processor. Contemporaneously with the delivery of quarterly financial statements, each Loan Party shall provide an updated **Schedule 7.2.3** to reflect any additional credit card arrangements to which any Borrower or any Subsidiary is from time to time a party and shall deliver a Credit Card Agreement to the Applicable Agent upon entry into such additional credit card arrangements.

7.3. Lien on Real Estate.

7.3.1. Lien on Real Estate. The Obligations shall also be secured by Mortgages upon all Real Estate owned by the Loan Parties (if any). The Mortgages shall be duly recorded, at the Borrowers expense, in each office where such recording is required to constitute a fully perfected Lien on the Real Estate covered thereby. If any Loan Party acquires Real Estate hereafter, the Borrowers shall, within 30 days, execute, deliver and record a Mortgage sufficient to create a first priority Lien in favor of the Applicable Agent on such Real Estate, and shall deliver all Related Real Estate Documents.

7.3.2. Collateral Assignment of Leases. To further secure the prompt payment and performance of all Obligations, each Loan Party hereby collaterally transfers and assigns to the Applicable Agent, for the benefit of the Secured Parties, all of such Loan Party s right, title and interest in, to and under all now or hereafter existing leases of real Property to which such Loan Party is a party, whether as lessor or lessee, and all extensions, renewals and modifications thereof.

7.4. Other Collateral.

7.4.1. Commercial Tort Claims. The Borrowers shall promptly notify the Agents in writing if any Loan Party has a Commercial Tort Claim and, upon any Agent s request, shall promptly execute such documents and take such actions as such Agent deems appropriate to confer upon such Agent (for the benefit of the Secured Parties) a duly perfected, first priority Lien upon such claim.

7.4.2. Certain After-Acquired Collateral. The Borrowers shall promptly notify the Agents in writing if, after the Closing Date, any Loan Party obtains any interest in any Collateral consisting of Deposit Accounts, Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights and, upon any Agent s request, shall promptly execute such documents and take such actions as such Agent deems appropriate to effect such Agent s duly perfected, first priority Lien upon such Collateral, including obtaining any appropriate possession, control agreement, Lien Waiver or Lien Priority Agreement. If any Collateral is in the possession of a third party, at any Agent s request, the applicable Loan Party shall obtain an acknowledgment that such third party holds the Collateral for the benefit of such Agent.

7.5. No Assumption of Liability. The Lien on Collateral granted hereunder is given as security only and shall not subject any Agent or any Secured Party to, or in any way modify, any obligation or liability of the Loan Parties relating to any Collateral.

7.6. Further Assurances. Promptly upon request, the Loan Parties shall deliver such instruments, assignments, title certificates, or other documents or agreements, and shall take such actions, as each Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Loan Party authorizes each Agent to file any financing statement that indicates the Collateral as all assets or all personal property of such Loan Party, or words to similar effect, and ratifies any action taken by any Agent before the Closing Date to effect or perfect its Lien on any Collateral.

7.7. Guarantees by the Borrowers; Intercompany Debt Subordination Arrangements.

7.7.1. Guarantees.

(a) For value received and hereby acknowledged and as an inducement to the US Lenders, the Tranche A-1 Lenders and the Administrative Agent to make the Loans, and the Issuing Banks to issue, extend and renew Letters of Credit for the account of the US Borrower, the Canadian Borrower hereby unconditionally and irrevocably guarantees (i) the full punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Obligations of the US Borrower and each other Loan Party now or hereafter existing whether for principal, interest, fees, expenses or otherwise, and (ii) the strict performance and observance by the US Borrower and each other Loan Party of all agreements, warranties and covenants applicable to such Loan Party in this Agreement and the other Loan Documents and (iii) the obligations of the US Borrower and each other Loan Party under this Agreement and the other Loan Documents (such Obligations collectively being hereafter referred to as the Guaranteed US Obligations).

(b) For value received and hereby acknowledged and as an inducement to the Canadian Lenders and the Canadian Agent to make the Loans, and the Issuing Banks to issue, extend and renew Letters of Credit for the account of the Canadian Borrower, the US Borrower hereby unconditionally and irrevocably guarantees (i) the full punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Obligations of the Canadian Borrower and each other Loan Party now or hereafter existing whether for principal, interest, fees, expenses or otherwise, and (ii) the strict performance and observance by the Canadian Borrower and each other Loan Party of all agreements, warranties and covenants applicable to the such Loan Party in this Agreement and the other Loan Documents and (iii) the obligations of the Canadian Borrower and each other Loan Party under this Agreement and the other Loan Documents (such Obligations collectively being hereafter referred to as the Guaranteed Canadian Obligations).

7.7.2. Guarantees Absolute. The Canadian Borrower guarantees that the Guaranteed US Obligations will be paid strictly in accordance with the terms hereof, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the US Lenders with respect thereto. The US Borrower guarantees that the Guaranteed Canadian Obligations will be paid strictly in accordance with the terms hereof, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Canadian Lenders with respect thereto. The liability of the Canadian Borrower and the US Borrower under their guarantees of the Guaranteed US Obligations and the Guaranteed Canadian Obligations, respectively, shall be absolute and unconditional irrespective of:

(a) any Loan Party s lack of authorization, execution, validity or enforceability of this Agreement or any other Loan Document and any amendment hereof (with regard to such Guaranteed Obligations), or any other obligation, agreement or instrument relating thereto (it being agreed by each Borrower that its Guaranteed Obligations shall not be discharged prior to Full Payment of all of the Obligations) or any failure to obtain any necessary governmental consent or approvals or necessary third party consents or approvals;

(b) any Agent s, any Issuing Bank s or any Lender s exercise or enforcement of, or failure or delay in exercising or enforcing, legal proceedings to collect the Obligations or the Guaranteed Obligations or any power, right or remedy with respect to any of the Obligations or the Guaranteed Obligations, including (i) any suspension of any Agent s, any Issuing Bank s or any Lender s right to enforce any Borrower s Guaranteed Obligations, or (ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other amendment or waiver of or any consent to departure from this Agreement or the other Loan Documents (with regard to such Guaranteed Obligations) or any other agreement or instrument governing or evidencing any of the Guaranteed Obligations;

(c) any exchange, release, unenforceability, non-opposability or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(d) any change in ownership of any Loan Party;

(e) any acceptance of any partial payment(s) from any Loan Party;

(f) any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, assignment for the benefit of creditors, appointment of a receiver, interim receiver, receiver and manager, monitor or trustee for all or any part of any Loan Party s assets;

(g) any assignment, participation or other transfer or reallocation, in whole or in part (whether or not subject to a conversion of a Loan of one Type into a Loan of another Type or a conversion from one currency to another), of any Agent s, any Issuing Bank s or any Lender s interest in and rights under this Agreement or any other Loan Document, or of any Agent s, any Issuing Bank s or any Lender s interest in the Obligations or the Guaranteed Obligations;

(h) any cancellation, renunciation or surrender of any pledge, guaranty or any debt instrument evidencing the Obligations or the Guaranteed Obligations;

(i) any Agent s, any Issuing Bank s or any Lender s vote, claim, distribution, election, acceptance, action or inaction in any proceeding under any Insolvency Proceeding related to the Obligations or the Guaranteed Obligations; or

(j) any other action or circumstance, other than payment, which might otherwise constitute a defense available to, or a discharge of, any Borrower in respect of its Guaranteed Obligations (other than the defense of payment in full).

The guarantees contained in this **Section 7.7** shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any Guaranteed Obligation is rescinded or must otherwise be returned by any Agent, any Issuing Bank or any Lender upon the insolvency, bankruptcy or reorganization of any Loan Party or otherwise, all as though such payment had not been made.

7.7.3. Effectiveness; Enforcement. The guarantee of the Canadian Borrower hereunder shall be effective and shall be deemed to be made with respect to each Loan made to and each Letter of Credit issued for the account of the US Borrower as of the time it is made, issued or accepted, as applicable. The guarantee of the US Borrower hereunder shall be effective and shall be deemed to be made with respect to each Loan made to and each Letter of Credit issued for the account of the Canadian Borrower as of the time it is made, issued or accepted, as applicable. No invalidity, irregularity or unenforceability by reason of any Insolvency Proceeding, or any law or order of any government or agency thereof purporting to reduce, amend or otherwise affect any liability of any Loan Party, and no defect in or insufficiency or want of powers of any Loan Party or irregular or improperly recorded exercise thereof, shall impair, affect, be a defense to or claim against either guarantee. Each guarantee hereunder is a continuing guarantee and shall (a) survive any termination of this Agreement, and (b) remain in full force and effect until Full Payment of the Obligations to which such guarantee relates. The guarantee of the Canadian Borrower under this Agreement is made for the benefit of the Agents, the Issuing Banks and the Lenders and their successors and assigns, and may be enforced from time to time as often as occasion therefor may arise and without requirement on the part of any Agent, the Issuing Banks or the Lenders first to exercise any rights against the US Borrower, or to resort to any other source or means of obtaining payment of any of the Guaranteed US Obligations or to elect any other remedy. The guarantee of the US Borrower under this Agreement is made for the benefit of the Agents, the Issuing Banks and the Lenders and their successors and assigns, and may be enforced from time to time as often as occasion therefor may arise and without requirement on the part of any Agent, the Issuing Banks or the Lenders first to exercise any rights against the Canadian Borrower, or to resort to any other source or means of obtaining payment of any of the Guaranteed Canadian Obligations or to elect any other remedy.

7.7.4. Waiver. Each Borrower hereby renounces to the benefits of division and discussion with respect to their respective guarantees. Each Borrower hereby waives promptness, diligence, protest, notice of protest, all suretyship defenses, notice of acceptance and any other notice with respect to any of its Guaranteed Obligations and its guarantee and any requirement that any Agent, any Issuing Bank or any Lender secure, render enforceable or opposable, perfect or protect any security interest or Lien on any property subject thereto or exhaust any right or take any action against any Loan Party or any other Person or any Collateral. Each Borrower also irrevocably waives, to the fullest extent permitted by Applicable Law, all defenses which at any time may be available to it in respect of its Guaranteed Obligations by virtue of any statute of limitations, valuation, stay, moratorium law or similar law now or hereinafter in effect.

7.7.5. Subordination; Subrogation. Until the Full Payment of the Obligations, each Borrower agrees not to exercise, and each Borrower hereby waives, any rights against any other Loan Party as a result of payment by such Borrower hereunder, by way of subrogation, reimbursement, restitution, contribution or otherwise, and such Borrower will not prove any claim in competition with any Agent, any Issuing Bank or any Lender in respect of any payment hereunder in any proceedings of any nature in any Insolvency Proceeding; no Borrower will claim any set-off, recoupment or counterclaim against any other Loan Party in respect of any liability of a Loan Party to any other Loan Party; and each Borrower waives any benefit of and any right to participate in any Collateral which may be held by any Secured Party or any Agent. Each Borrower agrees that, after the occurrence and during the continuance of any Default or Event of Default, such Borrower will not demand, sue for or otherwise attempt to collect any Debt of any other Loan Party to such Borrower until Full Payment of all of the Obligations. If, notwithstanding the foregoing sentence, any Borrower shall collect, enforce or receive any amounts in respect of the Debt of any other Loan Party in violation of the foregoing sentence while any Obligations of such other Loan Party are still outstanding or while any Commitments are outstanding, such amounts shall be collected, enforced and received by such Borrower as trustee for the Lenders, the Issuing Banks and the Agents and be paid over to the Applicable Agent, for the benefit of the Lenders, the Issuing Banks and the Agents on account of the Obligations of such Borrower without affecting in any manner the liability of such Borrower under the other provisions hereof. The provisions of this section shall survive the expiration or termination of this Agreement and the other Loan Documents.

7.7.6. Payments. Each Borrower agrees to pay its Guaranteed Obligations in the currency in which such Obligation is payable by the other Loan Parties and all payments by such Borrower hereunder shall be made without setoff or counterclaim and shall be free and clear of and without deduction for any foreign or domestic Taxes, compulsory loans, restrictions or conditions of any nature now or hereafter imposed or levied by any jurisdiction or any political subdivision thereof or taxing or other authority therein unless such Borrower is required by Applicable Law to make such deduction or withholding.

7.7.7. Receipt of Information. Each Borrower acknowledges and confirms that it itself has established its own adequate means of obtaining from the other Loan Parties on a continuing basis all information desired by such Borrower concerning the financial condition of the other Loan Parties and that such Borrower will look to the other Loan Parties and not to any Agent or any Lender in order to keep adequately informed of changes in the Loan Parties financial condition.

7.8. Guaranty of the Subsidiaries. The Obligations shall also be guaranteed pursuant to the terms of each other Guaranty. The obligations of the Guarantors under each Guaranty are in turn secured by a perfected first priority security interest in and Lien upon (subject only to Permitted Liens entitled to priority under Applicable Law) all of the assets of each such Guarantor, whether now owned or hereafter acquired, pursuant to the terms of this Agreement and the Security Documents to which such Guarantor is a party.

7.9. Intercompany Debt Subordination Arrangements. Each Loan Party agrees that, after the occurrence and during the continuance of any Default or Event of Default, such Loan Party will not demand, sue for or otherwise attempt to collect any Debt of the other Loan Party owing to such Loan Party until Full Payment of the Obligations. If, notwithstanding the foregoing sentence, any Loan Party shall collect, enforce or receive any amounts in respect of the Debt of the other Loan Party in violation of the foregoing sentence prior to the Full Payment of the Obligations, such amounts shall be collected, enforced and received by such Loan Party as trustee for the Lenders, the Issuing Banks and the Agents and be paid over to the Applicable Agent, for the benefit of the Lenders, the

Issuing Banks and the Agents on account of the Obligations of the Loan Parties without affecting in any manner the liability of the Loan Parties under the other provisions hereof or any other Loan Documents. In addition, until the Full Payment of the Obligations, each Loan Party agrees not to exercise, and each Loan Party hereby waives, any rights against any other Loan Party as a result of payment by such Loan Party hereunder, by way of subrogation, reimbursement, restitution, contribution or otherwise, and such Loan Party will not prove any claim in competition with any Agent, any Issuing Bank or any Lender in respect of any payment hereunder in any proceedings of any nature in any Insolvency Proceeding; no Loan Party will claim any set-off, recoupment or counterclaim against the other Loan Party in respect of any liability of one Loan Party to the other Loan Party; and each Loan Party waives any benefit of and any right to participate in any Collateral which may be held by any Secured Party or any Agent. The provisions of this **Section 7.9** shall survive the expiration or termination of this Agreement and the other Loan Documents.

SECTION 8. COLLATERAL ADMINISTRATION

8.1. Borrowing Base Certificates. Each Borrower shall deliver to the Administrative Agent (and the Administrative Agent shall promptly deliver same to the Canadian Agent and the appropriate Lenders) on each Business Day, a Borrowing Base Certificate setting forth the US Borrowing Capacity, the Canadian Borrowing Capacity, the Aggregate Revolver Borrowing Capacity, the Tranche A-1 Borrowing Capacity, the Aggregate Borrowing Capacity and the Term Loan Borrowing Capacity as at the immediately preceding Business Day; provided that the Borrowers shall only be required to report Eligible Inventory, Eligible Major Credit Card Receivables and Eligible Private Label and Corporate Accounts weekly as at the end of the week most recently ended, such reporting to be updated not later than Wednesday of each week. All calculations of US Revolver Excess Availability, Canadian Revolver Excess Availability, Revolver Excess Availability, Tranche A-1 Excess Availability, Aggregate Excess Availability, the Term Loan Borrowing Capacity and Loan to Value Reserve shall originally be made by the Borrowers and certified by a Senior Officer (with such certification to be in such Person s capacity as a Senior Officer of a Loan Party and not in such Person s individual capacity); provided that the Administrative Agent may from time to time review and adjust any such calculation (a) to reflect its reasonable estimate of declines in value of any Collateral included in any of the US Borrowing Capacity, the Canadian Borrowing Capacity, the Tranche A-1 Borrowing Capacity and the Term Loan Borrowing Capacity, as the case may be, due to collections received in the Concentration Accounts or to reflect any events or circumstances affecting such Collateral; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting Collateral included in any of the US Borrowing Capacity, the Canadian Borrowing Capacity, the Tranche A-1 Borrowing Capacity and the Term Loan Borrowing Capacity, as the case may be; and (c) to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Availability Reserves. Each Borrowing Base Certificate delivered by the Borrowers shall be accompanied by a certificate, in form and substance satisfactory to the Administrative Agent and certified by a Senior Officer, as to the balances of each Deposit Account.

8.2. Account Verification. Whether or not a Default or Event of Default exists, each Agent shall have the right at any time, in the name of the Applicable Agent, any designee of such Agent or any Loan Party to verify the validity, amount or any other matter relating to any Accounts of the Loan Parties by mail, telephone or otherwise. The Loan Parties shall cooperate fully with any Agent in an effort to facilitate and promptly conclude any such verification process.

8.3. Administration of Inventory.

8.3.1. Records and Reports of Inventory. Each Loan Party shall keep accurate and complete records of its Inventory and the Borrowers shall submit to the Administrative Agent inventory reports as provided in **Section 10.1.1**. Each Borrower, Henry U.S. and Mayor s Florida shall conduct periodic cycle counts covering the entire Inventory at least once per calendar year (and on a more frequent basis if requested by the Administrative Agent when an Event of Default exists) consistent with historical practices, and shall provide to the Administrative Agent a report based on each such inventory and count promptly upon completion thereof, together with such supporting information as the Administrative Agent may reasonably request. The Administrative Agent may participate in and observe each inventory or physical count.

8.3.2. Returns of Inventory. No Loan Party shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business or (b) no Event of Default, US Revolver Overadvance or Canadian Revolver Overadvance exists or would result therefrom.

8.3.3. Acquisition, Sale and Maintenance. No Loan Party shall acquire or accept any Inventory which is part of the US Borrowing Capacity, Canadian Borrowing Capacity, Tranche A-1 Borrowing Capacity or the Term Loan Borrowing Capacity on consignment or approval. Other than as set forth in **Schedule 8.3.3**, no Loan Party shall sell any Inventory on consignment or approval in which such Loan Party acts as consignor unless otherwise expressly permitted by the Administrative Agent in its sole discretion. The Loan Parties shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all Applicable Law, and shall make current rent payments (within applicable grace periods provided for in leases) at all locations where Collateral is located, stored, used or held.

8.4. [Reserved].

8.5. General Provisions.

8.5.1. Location of Collateral. All tangible items of Collateral (other than Inventory in transit, Inventory located on the premises of a processer that has signed a Lien Waiver in favor of the Administrative Agent and certificated securities in the possession of the Applicable Agent), shall at all times be kept by the Loan Parties at the business locations set forth in **Schedule 8.5.1**, except that the Loan Parties may move Collateral to another location in the United States (or, with respect to Collateral owned by the Canadian Borrower, Canada), so long as, if such Collateral has an aggregate value of more than the Dollar Equivalent of $500,000, the Borrower Agent has (i) provided the Agents with 30 Business Days prior written notice thereof and (ii) other than with respect to Collateral in which the Lien in favor of the Administrative Agent may be perfected solely by filing with the Secretary of State (or similar Governmental Authority) of the applicable Loan Party s jurisdiction of organization or other applicable jurisdiction as required by Applicable Law and has been so perfected, delivered to the Administrative Agent evidence that all filings, recordings and registrations that are necessary or desirable to perfect the Lien in favor of the Applicable Agent, for the benefit of the Secured Parties, has been made (it is acknowledged that so long as all filings, recordings and registrations made against the US Loan Parties that are necessary or desirable to perfect the security interest in favor of the Applicable Agent on record as of the Closing Date remain on record, no additional filings with the Secretary of State of the State of Incorporation of each such US Loan Party shall be required hereunder). Contemporaneously with the delivery of quarterly financial statements, each Loan Party shall provide the Administrative Agent with an updated **Schedule 8.5.1** to reflect the locations of all tangible items of Collateral, other than Inventory in transit and certificated securities, which updated **Schedule 8.5.1** shall clearly indicate which locations are new since the last delivery of an

updated **Schedule 8.5.1**. The chief executive offices and other places of business of each Loan Party and Subsidiary as of the Closing Date are shown on **Schedule 8.5.1**. In the event of any change in the chief executive offices and other places of business of any Loan Party or any Subsidiary, the Borrowers shall deliver to the Administrative Agent an updated **Schedule 8.5.1.**

8.5.2. Insurance of Collateral; Condemnation Proceeds.

(a) Each Loan Party shall maintain insurance with respect to the Collateral, covering casualty, hazard, public liability, theft, malicious mischief, and such other risks, in such amounts, with such endorsements, and with such insurers (rated A or better by A.M. Best Rating Guide) as are reasonably satisfactory to the Administrative Agent. All proceeds of Collateral under each policy shall be payable to the Applicable Agent. From time to time upon request, the Loan Parties shall deliver to the Administrative Agent the originals or certified copies of their insurance policies and updated flood plain searches. As soon as practicable and in any event by the last day of each Fiscal Year, the Loan Parties shall deliver to the Administrative Agent a report in form and substance reasonably satisfactory to the Administrative Agent outlining all material insurance coverage maintained as of the date of such report by the Loan Parties and all material insurance coverage planned to be maintained by the Loan Parties in the immediately succeeding Fiscal Year. Unless the Administrative Agent shall agree otherwise, each policy shall include reasonably satisfactory endorsements (i) showing the Applicable Agent as loss payee or additional insured, as appropriate; (ii) requiring 30 days prior written notice to the Applicable Agent in the event of cancellation of the policy for any reason whatsoever; and (iii) specifying that the interest of the Applicable Agent shall not be impaired or invalidated by any act or neglect of any Loan Party or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. If any Loan Party fails to provide and pay for such insurance, the Applicable Agent may, at its option, but shall not be required to, procure the insurance and charge the Loan Parties therefor. Each Loan Party agrees to deliver to the Applicable Agent, promptly as rendered, copies of all reports made to insurance companies. While no Event of Default exists, the Loan Parties may settle, adjust or compromise any insurance claim, as long as the proceeds are delivered to the Applicable Agent. If an Event of Default exists, only the Applicable Agent shall be authorized to settle, adjust and compromise such claims. Without limiting the foregoing, the Loan Parties will (a) keep all of their physical property (and the property of their Subsidiaries) insured with casualty or physical hazard insurance on an all risks basis, with broad form flood and, to the extent consistent with prudent business practice for the location in which such property is situated, earthquake coverages and electronic data processing coverage, with a full replacement cost endorsement and an agreed amount clause in an amount equal to 100% of the full replacement cost of such property, (b) maintain all such workers compensation or similar insurance as may be required by Applicable Law and (c) maintain, in amounts and with deductibles equal to those generally maintained by businesses engaged in similar activities in similar geographic areas, general public or civil liability insurance against claims of bodily injury, death or property damage occurring, on, in or about the properties of the Loan Parties and their Subsidiaries; business interruption insurance; and product liability insurance.

(b) Any proceeds of insurance (other than proceeds from workers compensation or D&O insurance) and any awards arising from condemnation or expropriation of any Collateral shall be paid to the Applicable Agent.

8.5.3. Protection of Collateral. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes (other than Excluded Taxes) payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by the Agents to any Person to realize upon any Collateral, shall be borne and paid by the Loan Parties. No Agent shall be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in such Agent s actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at the Loan Parties sole risk.

8.5.4. Defense of Title to Collateral. Each Loan Party shall at all times defend its title to Collateral and the Applicable Agent s Liens therein against all Persons, claims and demands whatsoever, except Permitted Liens.

8.6. Power of Attorney. Each Loan Party hereby irrevocably constitutes and appoints the Applicable Agent (and all Persons designated by any Agent) as such Loan Party s true and lawful attorney (and agent-in-fact) for the purposes provided in this **Section 8.6**. The Applicable Agent, or such Agent s designee, may, without notice and in either its or a Loan Party s name, but at the cost and expense of the Loan Parties:

(a) Endorse a Loan Party s name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into the Applicable Agent s possession or control; and

(b) During an Event of Default, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts, by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as the Applicable Agent deems advisable; (iv) take control, in any manner, of any proceeds of Collateral; (v) prepare, file and sign a Loan Party s name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to a Loan Party, and notify postal authorities to change the address for delivery thereof to such address as the Applicable Agent may designate; (vii) endorse any Chattel Paper, Document, Instrument, invoice, freight bill, bill of lading, or similar document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use a Loan Party s stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use the information recorded on or contained in any data processing equipment and computer hardware and software relating to any Collateral; (x) make and adjust claims under policies of insurance; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit or banker s acceptance for which a Loan Party is a beneficiary; and (xii) take all other actions as the Applicable Agent deems appropriate to fulfill any Loan Party s obligations under the Loan Documents.

SECTION 9. REPRESENTATIONS AND WARRANTIES

9.1. General Representations and Warranties. To induce the Agents and the Lenders to enter into this Agreement and to make available the Commitments, Loans and Letters of Credit, each Loan Party represents and warrants that:

9.1.1. Organization and Qualification. Each Loan Party and Subsidiary is duly organized, validly existing and in good standing or subsisting, as applicable under the laws of the jurisdiction of its organization. Each Loan Party and Subsidiary is duly qualified, authorized to do business and in good standing as a foreign corporation in each jurisdiction where failure to be so qualified could reasonably be expected to have a Material Adverse Effect.

9.1.2. Power and Authority. Each Loan Party is duly authorized to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, and to execute, deliver and perform the Loan Documents to which it is a party.

The execution, delivery and performance of the Loan Documents by each Loan Party have been duly authorized by all necessary action, and do not (a) require any consent or approval of any holders of Capital Stock of any Loan Party, other than those already obtained; (b) contravene the Organizational Documents of any Loan Party; (c) violate or cause a material default under any Applicable Law or Material Contract; or (d) result in or require the imposition of any Lien (other than Permitted Liens and Liens granted hereunder) on any Property of any Loan Party.

9.1.3. Enforceability. Each Loan Document is a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each Loan Party in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors rights generally and by general equitable principles.

9.1.4. Capital Structure. **Schedule 9.1.4** shows, for each Loan Party and Subsidiary as of the Closing Date, its name, its jurisdiction of organization, its authorized and issued Capital Stock, the holders of its Capital Stock, whether such entity is a Loan Party and all agreements binding on such holders with respect to their Capital Stock. Each Loan Party has good title in its interest in the Capital Stock of its Subsidiaries, subject only to the Agents Liens and Liens in favor of the Term Loan Agent, and all such Capital Stock is duly issued, fully paid and non-assessable. Except as set forth in **Schedule 9.1.4**, there are no outstanding options to purchase, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to any Capital Stock of any Loan Party or any Subsidiary. Each Subsidiary of a Borrower (other than the Non-Material Subsidiaries) is a Guarantor.

9.1.5. Corporate Names; Locations. During the five years preceding the Closing Date, except as shown on **Schedule 9.1.5**, no Loan Party or Subsidiary has been known as or used any corporate, fictitious or trade names, has been the surviving corporation of a merger, amalgamation or combination, or has acquired any substantial part of the assets of any Person.

9.1.6. Title to Properties; Priority of Liens; Investments. (a) Each Loan Party and Subsidiary has good and marketable title to (or valid leasehold interests in) all of its Real Estate, and good title to all of its personal Property, including all Property reflected in any financial statements delivered to the Agents or the Lenders, in each case free of Liens except Permitted Liens. Each Loan Party and Subsidiary has paid and discharged all lawful claims that, if unpaid, could become a Lien on its Properties, other than Permitted Liens and except for such claims as are being Properly Contested. All Liens of the Agents on the Collateral are duly perfected, first priority Liens, subject only to Permitted Liens that are expressly allowed to have priority over the Agent s Liens. As of the Closing Date, **Schedule 9.1.6(a)** contains a true, accurate and complete list of each Loan Party s Real Estate assets, including all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting such Real Estate assets. The Borrowers do not have knowledge of any default that has occurred and is continuing under any agreement listed on **Schedule 9.1.6(a)** (except where the consequences, direct or indirect, of such default, if any, could not reasonably be expected to have a Material Adverse Effect), and each such agreement constitutes the legally valid and binding obligation of each applicable Loan Party, enforceable against such Loan Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors rights generally or by equitable principles.

(b) **Schedule 9.1.6(b)** sets forth a complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party on the date hereof, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.

9.1.7. Security Documents. The provisions of the Security Documents are effective to create in favor of the Applicable Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Permitted Liens) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed on or prior to the Closing Date and as contemplated hereby and by the Security Documents, no filing or other action will be necessary to perfect or protect such Liens.

9.1.8. Financial Statements. The consolidated and, if applicable, combined balance sheets, and related statements of income, cash flow and shareholder s equity, of the Loan Parties and Subsidiaries that have been and are hereafter delivered to the Agents and the Lenders, pursuant to **Sections 6.1** and **10.1.2** or otherwise, are prepared in accordance with GAAP and fairly present the financial positions and results of operations of the Loan Parties and Subsidiaries at the dates and for the periods indicated, subject, in the case of interim statements, to normal year-end adjustments and the absence of footnotes. All projections delivered from time to time to the Agents and the Lenders have been prepared in good faith, based on reasonable assumptions in light of the circumstances at such time. Since September 27, 2008 there has been no change in the condition, financial or otherwise, of any Loan Party or any Subsidiary that could reasonably be expected to have a Material Adverse Effect. Each Loan Party and Subsidiary is Solvent. As of the Closing Date and except for obligations set forth on **Schedule 9.1.8** or as otherwise disclosed to the Agents, neither the Loan Parties nor any of their respective Subsidiaries have any contingent liability or liability for Taxes, long-term lease or unusual forward or long-term commitment that is not reflected in financial statements referred to in this **Section 9.1.8** or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, or condition (financial or otherwise) of the Loan Parties and their Subsidiaries taken as a whole.

9.1.9. Surety Obligations. No Loan Party or Subsidiary is obligated as surety or indemnitor under any bond or other contract that assures payment or performance of any obligation of any Person, except as permitted hereunder.

9.1.10. Taxes. Each Loan Party and Subsidiary has filed all federal, state, provincial, local and foreign tax returns and other reports that it is required by law to file, and has paid, or made provision for the payment of, all Taxes upon it, its income and its Properties that are due and payable, except to the extent being Properly Contested. The provision for Taxes on the books of each Loan Party and Subsidiary is adequate for all years not closed by applicable statutes, and for its current Fiscal Year.

9.1.11. Brokers. There are no brokerage commissions, finder s fees or investment banking fees payable in connection with any transactions contemplated by the Loan Documents.

9.1.12. Intellectual Property. Each Loan Party and Subsidiary owns or has the lawful right to use all Intellectual Property necessary for the conduct of its business, without conflict with any rights of others. There is no pending or, to any Loan Party s knowledge, threatened material Intellectual Property Claim with respect to any Loan Party, any Subsidiary or any of their Property (including any Intellectual Property). All Intellectual Property owned by any Loan Party or any Subsidiary and registered with the U.S. Patent and Trademark Office, the Canadian Intellectual Property Office or any other applicable Governmental Authority is identified on **Schedule 9.1.12**.

9.1.13. Governmental Approvals; Other Consents. Each Loan Party and Subsidiary has, is in compliance with, and is in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease and operate its Properties, except to the extent compliance with such Governmental Approvals could not reasonably be expected to result in a Material Adverse Effect. All necessary material import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and the Loan Parties and Subsidiaries have complied with all

applicable foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a Material Adverse Effect. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the transactions contemplated hereby, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Security Documents, (c) the perfection or maintenance of the Liens created under the Security Documents, other than UCC and PPSA filings that will be made on or prior to the Closing Date or on such future date as may be necessary to maintain such perfection, or (d) the exercise by any Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Security Documents.

9.1.14. Compliance with Laws. Each Loan Party and Subsidiary has duly complied, and its Properties and business operations are in compliance with all Applicable Law, except where noncompliance could not reasonably be expected to have a Material Adverse Effect. There have been no citations, notices or orders of noncompliance issued to any Loan Party or any Subsidiary under any Applicable Law, the receipt of which could reasonably be expected to have a Material Adverse Effect.

9.1.15. Compliance with Environmental Laws. Except as disclosed on **Schedule 9.1.15** and except to the extent any of the following could not reasonably be expected to result in a Material Adverse Effect, no Loan Party s or Subsidiary s past or present operations, Real Estate or other Properties are subject to any federal, state, provincial or local investigation to determine whether any remedial action is needed to address any environmental pollution, hazardous material or environmental clean-up. No Loan Party or Subsidiary has received any Environmental Notice the receipt of which could reasonably be expected to result in a Material Adverse Effect. No Loan Party or Subsidiary has any material contingent liability with respect to any Environmental Release, environmental pollution or hazardous material on any Real Estate now or previously owned, leased or operated by it in any case that could reasonably be expected to result in a Material Adverse Effect.

9.1.16. Burdensome Contracts. No Loan Party or Subsidiary is a party or subject to any contract, agreement or charter restriction that could reasonably be expected to have a Material Adverse Effect. No Loan Party or Subsidiary is party or subject to any contract, agreement or charter restriction which prohibits the execution or delivery of any Loan Documents by a Loan Party or the performance by a Loan Party of any obligations thereunder, except as identified on **Schedule 9.1.16**.

9.1.17. Litigation. Except as shown on **Schedule 9.1.17**, there are no proceedings or investigations pending or, to any Loan Party s knowledge, threatened against any Loan Party or any Subsidiary, or any of their businesses, operations, Properties, or conditions, that (a) relate to any Loan Documents or transactions contemplated thereby; or (b) could reasonably be expected to have a Material Adverse Effect. No Loan Party or Subsidiary is in default with respect to any order, injunction or judgment of any Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

9.1.18. Insurance; No Casualty. The properties of each Loan Party and its Subsidiaries are insured with financially sound and reputable insurance companies that are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Party or the applicable Subsidiary operates. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

9.1.19. No Defaults; Material Contracts. No event or circumstance has occurred or exists as of the date of this Agreement that constitutes a Default or Event of Default. **Schedule 9.1.19** contains a true, correct and complete list of all Material Contracts, and except as described thereon, all such Material Contracts are in full force and effect. No Loan Party or Subsidiary is in default, and no event or circumstance has occurred or exists that with the passage of time or giving of notice would constitute a default, under any Material Contract or in the payment of borrowed money. There is no basis upon which any party (other than a Loan Party or the Subsidiary) could terminate a Material Contract prior to its scheduled termination date.

9.1.20. Employee Benefit Plans; Canadian Plans.

(a) Each Employee Benefit Plan and each Guaranteed Pension Plan has been maintained and operated in compliance in all material respects with the provisions of ERISA and all Applicable Pension Legislation and, to the extent applicable, the Code, including but not limited to the provisions thereunder respecting prohibited transactions and the bonding of fiduciaries and other persons handling plan funds as required by §412 of ERISA. The Borrowers have heretofore delivered to the Administrative Agent the most recently completed annual report, Form 5500, with all required attachments, and actuarial statement required to be submitted under §103(d) of ERISA, with respect to each Guaranteed Pension Plan.

(b) No Employee Benefit Plan, which is an employee welfare benefit plan within the meaning of §3(1) or §3(2)(B) of ERISA, provides benefit coverage subsequent to termination of employment, except as required by Title I, Part 6 of ERISA or the applicable state insurance laws. The Borrowers may terminate each such Employee Benefit Plan at any time (or at any time subsequent to the expiration of any applicable bargaining agreement) in the discretion of the Borrowers without liability to any Person other than for claims arising prior to termination.

(c) Each contribution required to be made to a Guaranteed Pension Plan under the Pension Funding Rules, has been timely made. No waiver of the minimum funding standards or extension of amortization periods under the Pension Funding Rules has been received with respect to any Guaranteed Pension Plan, and neither the Borrowers nor any ERISA Affiliate is obligated to or has posted security in connection with an amendment to a Guaranteed Pension Plan pursuant to §436 of the Code or, prior to the effective date as to such Guaranteed Pension Plan of the Pension Protection Act of 2006, §307 of ERISA or §401(a)(29) of the Code. No liability to the PBGC (other than required insurance premiums, all of which have been timely paid) has been incurred by the Borrowers or any ERISA Affiliate with respect to any Guaranteed Pension Plan and there has not been any ERISA Reportable Event (other than an ERISA Reportable Event as to which the requirement of 30 days notice has been waived under PBGC §4043), or any other event or condition which presents a material risk of termination of any Guaranteed Pension Plan by the PBGC. Based on the latest valuation of each Guaranteed Pension Plan (which in each case occurred within twelve months of the date of this representation), and on the actuarial methods and assumptions employed for that valuation, the aggregate benefit liabilities of all such Guaranteed Pension Plans within the meaning of §4001 of ERISA did not exceed the aggregate value of the assets of all such Guaranteed Pension Plans, disregarding for this purpose the benefit liabilities and assets of any Guaranteed Pension Plan with assets in excess of benefit liabilities, by more than $500,000.

(d) Neither the Borrowers nor any ERISA Affiliate has incurred any material liability (including secondary liability) to any Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan under §4201 of ERISA or as a result of a sale of assets described in §4204 of ERISA. Neither the Borrowers nor any ERISA Affiliate has been notified that any

Multiemployer Plan is in reorganization or insolvent under and within the meaning of §4241 or §4245 of ERISA or is at risk of entering reorganization or becoming insolvent, or that any Multiemployer Plan intends to terminate or has been terminated under §4041A of ERISA.

(e) None of the Canadian Loan Parties or any of their Subsidiaries have any Canadian Plan other than those listed on **Schedule 9.1.20**, and all monthly and other payments in respect of such Canadian Plans which are pension plans (on account of contributions, special contributions or unfunded liability or solvency deficiencies) or otherwise are accurately set forth in **Schedule 9.1.20**. No Canadian Plan has been terminated or partially terminated or is insolvent or in reorganization, nor have any proceedings been instituted to terminate, in whole or in part, or reorganize any Canadian Plan.

(f) None of the Canadian Loan Parties or any of their Subsidiaries have ceased to participate (in whole or in part) as a participating employer in any Canadian Plan which is a pension plan or has withdrawn from any Canadian Plan which is a pension plan in a complete or partial withdrawal, nor has a condition occurred which if continued would result in a complete or partial withdrawal.

(g) None of the Canadian Loan Parties or any of their Subsidiaries have any unfunded liability on windup or withdrawal liability, including contingent withdrawal or windup liability, to any Canadian Plan or any solvency deficiency in respect of any Canadian Plan.

(h) None of the Canadian Loan Parties or any of their Subsidiaries have any unfunded liability on windup or any liability in respect of any Canadian Plan (including to the FSCO) other than for required insurance premiums or contributions or remittances which have been paid, contributed and remitted when due.

(i) Each Canadian Loan Party and each Subsidiary of a Canadian Loan Party has made all contributions to its Canadian Plans required by law or the terms thereof to be made by it when due, and it is not in arrears in the payment of any contribution, payment, remittance or assessment or in default in filing any reports, returns, statements, and similar documents in respect of the Canadian Plans required to be made or paid by it pursuant to any Canadian Plan, any Applicable Law, act, regulation, directive or order or any employment, union, pension, deferred profit sharing, benefit, bonus or other similar agreement or arrangement.

(j) None of the Canadian Loan Parties or any of their Subsidiaries are liable or, to the best of the Borrowers knowledge, alleged to be liable, to any employee or former employee, director or former director, officer or former officer or other Person resulting from any violation or alleged violation of any Canadian Plan, any fiduciary duty, any Applicable Law or agreement in relation to any Canadian Plan or has any unfunded pension or like obligations or solvency deficiency (including any past service or experience deficiency funding liabilities), other than accrued obligations not yet due, for which it has made full provision in its books and records.

(k) All vacation pay, bonuses, salaries and wages, to the extent accruing due, are properly reflected in the Canadian Loan Parties and their Subsidiaries books and records.

(l) Without limiting the foregoing, all of the Canadian Loan Parties and their Subsidiaries Canadian Plans are duly registered where required by, and are in compliance and good standing in all material respects under, all Applicable Laws, acts, statutes, regulations, orders, directives and agreements, including, without limitation, the ITA, the *Supplemental Pension Plans Act* (Quebec) and the *Pension Benefits Act* (Ontario), any successor legislation thereto, and other Applicable Pension Legislation of any jurisdiction.

(m) None of the Canadian Loan Party or any of their Subsidiaries have made any application for a funding waiver or extension of any amortization period in respect of any Canadian Plan.

(n) There has been no prohibited transaction or violation of any fiduciary responsibilities with respect to any Canadian Plan.

(o) There are no outstanding or pending or threatened investigations, claims, suits or proceedings in respect of any Canadian Plans (including to assert rights or claims to benefits) that could give rise to a Material Adverse Effect.

9.1.21. Trade Relations. There exists no actual or threatened termination, limitation or modification of any business relationship between any Loan Party or any Subsidiary and any customer or supplier, or any group of customers or suppliers, individually or in the aggregate the consequence of which could reasonably be expected to result in a Material Adverse Effect.

9.1.22. Labor Relations. Except as described on **Schedule 9.1.22**, no Loan Party or Subsidiary is party to or bound by any (a) management agreement, (b) consulting agreement where the aggregate obligations of such Loan Party or Subsidiary thereunder are in excess of the Dollar Equivalent of $100,000 or (c) collective bargaining agreement. There are no material grievances, disputes or controversies with any union or other organization of any Loan Party s or Subsidiary s employees, or, to any Loan Party s knowledge, any asserted or threatened strikes, work stoppages or demands for collective bargaining that, in any case, could reasonably be expected to result in a Material Adverse Effect.

9.1.23. Not a Regulated Entity. No Loan Party is (a) an investment company or a person directly or indirectly controlled by or acting on behalf of an investment company within the meaning of the Investment Company Act of 1940; (b) a holding company , or a subsidiary company of a holding company , or an affiliate of a holding company , as such terms are defined in the Public Utility Holding Company Act of 2005; or (c) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other Applicable Law regarding its authority to incur Debt.

9.1.24. Margin Stock. No Loan Party or Subsidiary is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Loan proceeds or Letters of Credit will be used by the Loan Parties to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose governed by Regulations T, U or X of the Board of Governors.

9.1.25. Certain Transactions. Except as set forth on **Schedule 9.1.25** and except with respect to employee discount and similar programs conducted in the ordinary course of business and consistent with past practices, none of the officers, directors, or employees of any Loan Party is presently a party to any transaction with any Loan Party (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, director or such employee or, to the knowledge of any Loan Party, any corporation, partnership, trust or other Person in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

9.1.26. Patriot Act. To the extent applicable, each Loan Party is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the Patriot Act. No part of the proceeds of the Loans or Letters 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.

9.1.27. Complete Disclosure. No (x) Loan Document or (y) information (except financial projections) provided by or on behalf of any Loan Party and delivered to the Lenders in connection with the transactions contemplated hereby, contains, as and when delivered, any untrue statement of a material fact, nor fails to disclose any material fact necessary to make the statements contained therein not materially misleading. All financial projections provided by or on behalf of any Loan Party and delivered to the Lenders in connection with the transactions contemplated hereby have been prepared in good faith based on reasonable assumptions.

9.1.28. Use of Proceeds. The proceeds of the Loans shall be used solely for working capital and general corporate purposes. The Borrowers will obtain Letters of Credit solely in accordance with their ordinary course of business. No proceeds of the Loans may be used, nor shall any be requested, with a view towards the accumulation of any general fund or funded reserve of the Borrowers other than in the ordinary course of the Borrowers business and consistent with the provisions of this Agreement.

9.1.29. Non-Material Subsidiaries. None of the Non-Material Subsidiaries owns any assets used in connection with any of the Loan Parties business operations.

9.1.30. Quebec Premises. As of the Closing Date, the lease arrangements for the property located at 1425 Argyle Avenue, Montreal, Quebec have been terminated and none of the Loan Parties nor any of their Collateral is located at such property.

9.1.31. Alloyco International. As of the Closing Date, no Loan Party utilizes Alloyco International Inc. as a processor.

9.1.32. Certain Consignment Arrangements. As of the Closing Date, no Loan Party holds any consigned inventory from any of Clover Corporation, M. Fabrikant & Sons, Inc. or S.H.R. Inc.

SECTION 10. COVENANTS AND CONTINUING AGREEMENTS

10.1. Affirmative Covenants. For so long as any Commitments or Obligations are outstanding, each Loan Party shall, and shall cause each Subsidiary to:

10.1.1. Inspections; Collateral Reports; Appraisals.

(a) Permit the Lenders, through the Administrative Agent, the Canadian Agent or any of the Lenders other designated representatives, to visit and inspect any of the properties of the Loan Parties or any of their Subsidiaries, to examine the books of account of the Loan Parties and their Subsidiaries (and, subject to the confidentiality provisions contained herein, to make copies thereof and extracts therefrom, duplicate, cause to be reduced to hard copy, run off, draw off, and otherwise use any and all computer or electronically stored information or data which relates to the Loan Parties, or any service bureau, contractor, accountant, or other person), and to discuss the affairs, finances and accounts of the Loan Parties and their Subsidiaries with, and to be advised as to the same by, its and their officers, and to conduct examinations and verifications (whether by internal commercial finance examiners or independent auditors) of all components included in the US Borrowing Capacity, the Canadian Borrowing Capacity, the Tranche A-1 Borrowing Capacity and the Term Loan Borrowing Capacity, all, prior to the occurrence

and during the continuance of an Event of Default, upon prior reasonable notice and at such reasonable times and intervals as the Administrative Agent, the Canadian Agent or any Lender may reasonably request. The Administrative Agent may, at the Borrowers expense, participate in or observe any physical count of inventory included in the Collateral.

(b) Upon the request of the Administrative Agent and at the Borrowers expense, but in any event four (4) times during each calendar year in which no Event of Default has occurred, the Borrowers will obtain and deliver to the Administrative Agent, or, if the Administrative Agent so elects, will cooperate with the Administrative Agent in the Administrative Agent obtaining, a report of an independent collateral auditor satisfactory to the Administrative Agent (which auditor shall not be affiliated with any existing Lender or any existing Term Loan Lender) with respect to the Accounts and Inventory components included in the US Borrowing Capacity, the Canadian Borrowing Capacity, the Tranche A-1 Borrowing Capacity and the Term Loan Borrowing Capacity (each, a **Collateral Value Report**), which Collateral Value Report shall indicate whether or not the information set forth in the Borrowing Base Certificate most recently delivered is accurate and complete in all material respects based upon a review by such auditors of the Accounts (including verification with respect to the amount, aging, identity and credit of the respective Account Debtors and the billing practices of the Borrowers or their applicable Subsidiary) and Inventory (including verification as to the ownership, the value, location and respective types). All Collateral Value Reports under this **Section 10.1.1(b)** shall be conducted and made at the expense of the Borrowers.

(c) In addition to the desktop appraisal reports set forth in clause (d) below, upon the request of the Administrative Agent and at the Borrowers expense, but in any event four (4) times during each calendar year in which no Event of Default has occurred, the Borrowers will obtain and deliver to the Agents appraisal reports, or if the Administrative Agent so elects, will cooperate with the Administrative Agent in the Administrative Agents obtaining appraisal reports, in each case in form and substance reasonably satisfactory to the Administrative Agent stating the then current net orderly liquidation value or going out of business values of all or a portion of the Inventory and the then current forced liquidation value of all or any portion of the Private Label Accounts and all Accounts due from corporate sales accounts and wholesale accounts. Upon the request of any Agent and at the Borrowers expense, the Borrowers will obtain and deliver to the Agents appraisal reports in form and substance and from appraisers reasonably satisfactory to the Administrative Agent, stating (i) the then current fair market, orderly liquidation and forced liquidation values of all or any portion of the Inventory, Accounts, the Equipment or Real Estate owned by the Borrowers or any of their Subsidiaries and (ii) the then current liquidation value of each of the Borrowers and their Subsidiaries. All appraisals under this **Section 10.1.1(c)** shall be conducted and made at the expense of the Borrowers.

(d) Upon the request of the Administrative Agent and at the Borrowers expense, the Borrowers will obtain and deliver to the Administrative Agent, or, if the Administrative Agent so elects, will cooperate with the Administrative Agent in the Administrative Agents obtaining, a desktop appraisal report of an independent collateral appraiser satisfactory to the Administrative Agent (which appraiser shall not be affiliated with any existing Lender or any existing Term Loan Lender) with respect to the Inventory components included in the US Borrowing Capacity, the Canadian Borrowing Capacity, the Tranche A-1 Borrowing Capacity and the Term Loan Borrowing Capacity. Without limiting the foregoing, for the period commencing on the Closing Date and continuing through July 15, 2009, the Borrowers shall obtain and deliver to the Administrative Agent or cooperate with the Administrative Agent in obtaining desktop appraisal reports satisfactory to the Administrative Agent, which shall be delivered monthly by no later than the fifteenth (15th) day of each calendar month with the first such appraisal to be delivered on January 15, 2009. All desktop appraisals under this **Section 10.1.1(d)** shall be conducted and made at the expense of the Borrowers.

10.1.2. Financial and Other Information. Keep adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP reflecting all financial transactions; and furnish to the Agents and the Lenders:

(a) as soon as available, but in any event not later than (i) 90 days after the close of each Fiscal Year, the unaudited consolidated balance sheet of the Borrowers and their Subsidiaries as at the end of such Fiscal Year, and the related consolidated statement of income, shareholder s equity, cash flows and same store sales performance metrics of the Borrowers and their Subsidiaries for such Fiscal Year, which statements shall be in reasonable detail and, other than with respect to such same store sales performance metrics, prepared in accordance with GAAP (except for the absence of footnotes, normal recording year-end adjustments, and consolidation and elimination entries and intercompany charges) and in each case shall set forth in comparative form corresponding figures for the preceding Fiscal Year, the most recent projections provided pursuant to **Section 10.1.2(g)** and other information acceptable to the Administrative Agent and (ii) the earlier of (x) 120 days after the close of each Fiscal Year and (y) the date on which the audited financial statements of the Borrowers and their Subsidiaries are provided to any other Person, consolidated balance sheet of the Borrowers and their Subsidiaries as at the end of such Fiscal Year, and the related consolidated statement of income, shareholder s equity and cash flows of the Borrowers and their Subsidiaries for such Fiscal Year, which consolidated financial statements shall be audited and certified (without qualification as to scope, going concern or similar items) by a firm of independent certified public accountants of recognized standing selected by the Borrowers and acceptable to the Administrative Agent (it being acknowledged that KPMG LLP shall be acceptable to the Administrative Agent), and shall set forth in comparative form corresponding figures for the preceding Fiscal Year and the most recent projections provided pursuant to **Section 10.1.2(g)** and other information acceptable to the Administrative Agent.

(b) as soon as available, but in any event not later than 45 days after the end of each Fiscal Quarter of each Fiscal Year of the Borrowers (including, without limitation, the fourth Fiscal Quarter of each Fiscal Year of the Borrowers for which the deadline shall be 75 days), unaudited balance sheets as of the end of such Fiscal Quarter and the related statements of income and cash flows and same store sales performance metrics for such Fiscal Quarter and for the portion of the Fiscal Year then elapsed, on a consolidated basis for the Borrowers and their Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year and the most recent projections provided pursuant to **Section 10.1.2(g)** and certified by a Senior Officer of the Borrowers as prepared in accordance with GAAP (other than with respect to such same store sales performance metrics) and fairly presenting the financial position and results of operations for such Fiscal Quarter and period, subject to normal year-end adjustments;

(c) as soon as available, but in any event not later than 30 days after the end of each month (including, without limitation, the third month of each Fiscal Quarter), unaudited balance sheets as of the end of such month and the related statements of income and cash flows and same store sales performance metrics for such month and for the portion of the Fiscal Year then elapsed, on a consolidated basis for the Borrowers and their Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year and the most recent projections provided pursuant to **Section 10.1.2(g)** and certified by a Senior Officer of the Borrowers as prepared in accordance with GAAP (other than such same store sales performance metrics) and fairly presenting the financial position and results of operations for such month and period, subject to normal year-end adjustments;

(d) concurrently with delivery of financial statements under **clauses (a)**, **(b)** and **(c)** above, or more frequently if requested by the Administrative Agent while an Event of Default exists, a Compliance Certificate executed by a Senior Officer of each Borrower (with such certification to be in such Person s capacity as a Senior Officer of such Borrower and not in such Person s individual capacity);

(e) concurrently with delivery of financial statements under **clause (a)** above, and otherwise promptly after the request by the Administrative Agent, copies of any detailed audit reports or management letters submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any Subsidiary, or any audit of any of them;

(f) concurrently with delivery of financial statements under **clause (b)** above, and otherwise promptly after the request by the Administrative Agent, a certificate of a duly authorized officer of each Borrower either confirming that there has been no change in such information since the date of the information certificates delivered on the Closing Date or the date of the most recent information certificate delivered pursuant to this Section and/or identifying such changes;

(g) from time to time upon request of the Agents, but in any event no later than 30 days prior to the beginning of each Fiscal Year of the Borrowers, draft projections of the Loan Parties consolidated balance sheets, results of operations, cash flow, budgets and availability under the credit facilities (including, without limitation, projections of US Revolver Excess Availability, Canadian Revolver Excess Availability, Revolver Excess Availability, Tranche A-1 Excess Availability and Aggregate Excess Availability) for the next three Fiscal Years, year by year, and for such Fiscal Year, on a month by month basis, such draft projections to be made in good faith based on reasonable assumptions of the Borrowers at the time made; and from time to time upon request of the Agents, but in any event no later than 45 days following the beginning of each Fiscal Year of the Borrowers, final projections of the Loan Parties for each of the types of statements identified herein;

(h) concurrently with delivery of financial statements under **clause (b)** above, a report setting forth a listing of any new stores, offices or places of business of the Loan Parties since the delivery of the last such report;

(i) at any Agent s request, a listing of each Loan Party s trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging;

(j) promptly after the sending or filing thereof, copies of any proxy statements, financial statements or reports that any Loan Party has made generally available to its shareholders; copies of any regular, periodic and special reports or registration statements or prospectuses that any Loan Party files with the Securities and Exchange Commission or any other Governmental Authority, or any securities exchange; and copies of any press releases or other statements made available by a Loan Party to the public concerning material changes to or developments in the business of such Loan Party;

(k) compliance certificates (or such other evidence of compliance) with the terms of the Term Loan Documents (or any documents relating to renewals, refinancings and extensions of the Debt incurred thereunder), in each case, at the times and in the forms delivered to the agents and/or the lenders under the Term Loan Documents (or any documents relating to renewals, refinancings and extensions of the Debt incurred thereunder);

(l) within fifteen (15) days after the end of each calendar month in each Fiscal Year of the Borrowers, a certification by a Senior Officer of each Borrower (i) that all rent payments of the Borrowers and their Subsidiaries have been made, (ii) that no lease defaults exist for such period and (iii) as to the amount of outstanding consignment accounts payable for such calendar month and the book value determined in accordance with GAAP of Inventory held on a consignment basis;

(m)(i) promptly upon request of the Administrative Agent, furnish to the Administrative Agent a copy of the most recent actuarial statement required to be submitted under §103(d) of ERISA, other Applicable Pension Legislation and Annual Report, Form 5500 or other similar document with all required attachments, in respect of each Guaranteed Pension Plan and Canadian Plan, (ii) promptly upon receipt or dispatch, furnish to the Administrative Agent any notice, report or demand sent or received in respect of a Guaranteed Pension Plan under §§302, 4041, 4042, 4043, 4063, 4065, 4066 and 4068 of ERISA, or in respect of a Multiemployer Plan under §4041A, 4202, 4219, 4242, or 4245 of ERISA or in respect of a Canadian Plan or other similar provisions of Applicable Pension Legislation, (iii) promptly deliver to the Administrative Agent all information required to be reported to the PBGC under Section 4010 of ERISA, (iv) promptly deliver to the Administrative Agent such other documents or governmental reports or filings relating to any Guaranteed Pension Plan, Multiemployer Plan or Canadian Plan as the Administrative Agent shall reasonably request and (v) promptly following any request therefor, on and after the effective date of the Pension Protection Act of 2006, the Borrowers shall deliver to the Administrative Agent copies of any documents or notices described in Sections 101(j), (k) or (l) of ERISA that the Borrowers or any ERISA Affiliate may request with respect to any Guaranteed Pension Plan or Multiemployer Plan, as applicable; provided, that if the Borrowers or any ERISA Affiliate have not requested such documents or notices from the administrator of sponsor of the applicable Guaranteed Pension Plan or Multiemployer Plan, the Borrowers or ERISA Affiliate shall, upon request from the Administrative Agent, promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof;

(n) promptly upon delivery thereof, copies of all documents and materials of a material financial nature or otherwise provided to any other creditor of any Loan Party or any Subsidiary;

(o) promptly upon request therefor, all information pertaining to the Loan Parties and their Subsidiaries reasonably requested by any Lender in order for such Lender to comply with the provisions of the Patriot Act;

(p) at the request of the Administrative Agent, a thirteen (13) week cash flow report;

(q) such other reports and information (financial or otherwise) as any Agent may request from time to time in connection with any Collateral or any Loan Party s or the Subsidiary s financial condition or business; and

(r) promptly but in any event no later than five (5) days after to any Loan Party s entry into any consignment arrangement (whether such consignment arrangement is documented or otherwise) in which such Loan Party acts as a consignee, notify the Agents in writing of such consignment arrangement, specifying the consignor, the consignee, the term of the consignment arrangement, the goods to be consigned and any other material terms of such arrangements and, at the request of the Administrative Agent, promptly deliver a true, complete and accurate copy of such consignment agreement and related documents and any amendments, modifications, supplements, waivers or other modifications thereof.

Documents required to be delivered pursuant to **Sections 10.1.2(a), (b)** or **(j)** (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the applicable Borrower posts such documents, or provides a link thereto on

such Borrower s website on the Internet at the website address indicated in writing to the Agents and the Lenders by the Borrower Agent; or (ii) on which such documents are posted on such Borrower s behalf on an Internet or intranet website, if any, to which each Lender and each Agent have access (whether a commercial, third-party website or whether sponsored by any Agent); provided that: (i) such Borrower shall deliver paper copies of such documents to any Agent or any Lender that requests such Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by such Agent or such Lender and (ii) such Borrower shall notify each Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrowers shall be required to provide paper copies of the Compliance Certificates to the Agent and the Lenders. Except for such Compliance Certificates, no Agent shall have any obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Loan Parties hereby acknowledge that (a) the Agents and/or the Arranger will make available to the Lenders and the Issuing Banks materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, Borrower Materials) by posting the Borrower Materials on IntraLinks or another similar electronic system (the Platform) and (b) certain of the Lenders may be public-side Lenders (*i.e.,* the Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a Public Lender). The Loan Parties hereby agree that (w) all Borrower Materials that are to be made available to the Public Lenders shall be clearly and conspicuously marked PUBLIC which, at a minimum, shall mean that the word PUBLIC shall appear prominently on the first page thereof; (x) by marking Borrower Materials PUBLIC, the Loan Parties shall be deemed to have authorized the Agents, the Arranger, the Issuing Banks and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute confidential information in accordance with **Section 14.11**, they shall be treated as set forth in such Section); (y) all Borrower Materials marked PUBLIC are permitted to be made available through a portion of the Platform designated Public Investor; and (z) the Agents and Arranger shall be entitled to treat any Borrower Materials that are not marked PUBLIC as being suitable only for posting on a portion of the Platform not designated Public Investor.

10.1.3. Notices.

(a) Notify the Agents and the Lenders in writing, promptly after any Senior Officer of any Loan Party obtains knowledge thereof, of any of the following that affects a Loan Party: (i) the threat or commencement of any proceeding or investigation, whether or not covered by insurance, reasonably likely to result in a Material Adverse Effect; (ii) any material pending or threatened labor dispute, strike or walkout, or the expiration of any material labor contract; (iii) any material default under or termination of a Material Contract; (iv) the existence of any Default or Event of Default; (v) any default under the Term Loan Documents, the Brinkhaus Subordinated Debt Documents, the Quebec Subordinated Debt Documents, the Rhode Island Debt Documents, the Rolex Documents or any other document, instrument or agreement evidencing Debt in excess of the Dollar Equivalent of $500,000; (vi) any judgment in an amount exceeding the Dollar Equivalent of $750,000; (vii) the assertion of any Intellectual Property Claim, if an adverse resolution is reasonably likely to result in a Material Adverse Effect; (viii) any violation or asserted violation of any Applicable Law (including ERISA, OSHA, FLSA, or any Environmental Laws), if an adverse resolution is reasonably likely to result in a Material Adverse Effect; (ix) any material Environmental Release by a Loan Party or on any Property owned, leased or occupied by a Loan Party; or

receipt of any Environmental Notice; (x) any circumstance or occurrence reasonably likely to result in a Material Adverse Effect; (xi) any change in the board of directors (or similar governing body) of either Borrower; (xii) the discharge of or any withdrawal or resignation by the Loan Parties independent accountants; (xiii) any material change in any Loan Party s accounting or financial reporting practices; (xiv) any incurrence of Debt, issuance of Capital Stock or dispositions of Property with a fair market value in excess of the Dollar Equivalent of $500,000, in each case, by any Loan Party or, if applicable, any change in any Debt rating of any Loan Party; (xv) any opening of a new store, office or place of business; (xvi) any damage to, or destruction of, any material portion of the Collateral; (xvii) a US Revolver Overadvance or a Canadian Overadvance as a result of a decrease in the US Borrowing Capacity or the Canadian Borrowing Capacity, as applicable, in which case such notice shall also include the amount of such Overadvance Loan; (xviii) any Loan Party s adoption of a French form of name or any change in any Loan Party s corporate name, identity, corporate structure, chief executive office, domicile or Federal Taxpayer Identification Number, and (xix) any notices, materials or other information provided outside the ordinary course of business to the agents and/or lenders under the Term Loan Documents, the Brinkhaus Subordinated Debt Documents, the Quebec Subordinated Debt Documents, the Rhode Island Debt Documents or the Rolex Documents. The Loan Parties hereby agree not to effect or permit any change referred to in clause (xviii) above unless all filings have been made under the UCC, PPSA or otherwise that are required in order for the Applicable Agent to continue at all times following such change to have a valid, legal and perfected security interest in and Lien on all the Collateral as contemplated in the Security Documents.

(b) Notify the Agents in writing, promptly after any Senior Officer of any Loan Party obtains knowledge of (i) any determination by any Borrower or any Subsidiary that the Inventory levels of such Borrower or such Subsidiary are not adequate to meet the sales projections of such Borrower or such Subsidiary, and (ii) any failure of any Borrower or any Subsidiary to pay rent at any location, which failure continues for more than fifteen (15) days following the day on which such rent is due and payable by such Borrower or such Subsidiary.

10.1.4. Landlord and Storage Agreements. Upon request, provide the Administrative Agent with copies of all existing agreements, and promptly after execution thereof provide the Administrative Agent upon request with copies of all future agreements, between a Loan Party and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral having an aggregate value of more than the Dollar Equivalent of $100,000 may be kept or that otherwise may possess or handle any Collateral.

10.1.5. Compliance with Laws; Organizational Documents; Material Contracts. Comply (a) with all Applicable Laws, including ERISA, Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws, and laws regarding pension plans and the collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, unless failure to comply or maintain could not reasonably be expected to have a Material Adverse Effect, (b) with all Organizational Documents unless failure to comply therewith would not (x) be reasonably expected to have a Material Adverse Effect and (y) be reasonably expected to have a materially adverse effect on any Agent or any Lender and (c) with all of its Material Contracts except in each case where the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, if any material Environmental Release occurs at or on any Properties of any Loan Party or any Subsidiary, it shall act promptly and diligently to investigate and report to the Administrative Agent and all appropriate Governmental Authorities the extent of, and to make appropriate remedial action to eliminate, such Environmental Release, whether or not directed to do so by any Governmental Authority.

10.1.6. Taxes. Pay, remit and discharge all Taxes prior to the date on which they become delinquent or penalties attach, unless such Taxes are being Properly Contested.

10.1.7. Insurance. In addition to the insurance required hereunder with respect to Collateral, maintain insurance with insurers (rated A or better by Best Rating Guide) reasonably satisfactory to the Administrative Agent, with respect to the Properties, business and business interruption of the Loan Parties and Subsidiaries of such type (including product liability, workers compensation, larceny, embezzlement, or other criminal misappropriation insurance), in each case, in such amounts, and with such coverages and deductibles as are customary for companies similarly situated.

10.1.8. Licenses. Keep each License affecting any Collateral (including the manufacture, distribution or disposition of Inventory) or any other material Property of the Loan Parties and Subsidiaries in full force and effect, if the failure to maintain such License is reasonably likely to result in a Material Adverse Effect, promptly notify the Administrative Agent of any proposed modification to any such License, or entry into any new License, in each case at least 30 days prior to its effective date and notify the Administrative Agent of any default or breach asserted by any Person to have occurred under any License.

10.1.9. Future Subsidiaries. Promptly notify the Administrative Agent upon any Person becoming a Subsidiary and cause such Person, within 45 days after such Person becomes a Subsidiary, to (i) join this Agreement and the other Loan Documents, in a manner reasonably satisfactory to the Administrative Agent, as a Borrower or Guarantor hereunder and thereunder (such determination to be made by the Administrative Agent in its sole discretion), and (ii) execute and deliver such documents, instruments and agreements and to take such other actions as the Administrative Agent shall require to evidence and perfect a first priority Lien in favor of the Applicable Agent (for the benefit of the Secured Parties) on all assets of such Person as security for the Obligations, including delivery of such legal opinions and such other information, in form and substance reasonably satisfactory to the Administrative Agent, as it shall deem reasonably appropriate.

10.1.10. Payment of Obligations. Pay and discharge as the same shall become due and payable all its obligations and liabilities, including (a) all lawful claims which, if unpaid, would by law become a Lien (other than a Permitted Lien) upon its property; and (b) all Debt, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Debt.

10.1.11. Preservation of Existence. Preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization.

10.1.12. Maintenance of Properties. Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in working order and condition, ordinary wear and tear excepted and make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

10.1.13. Books and Records. Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of such Loan Parties or such Subsidiary, as the case may be.

10.1.14. Compliance with Terms of Leaseholds. Make all payments and otherwise perform all obligations in respect of all leases of real property to which any Loan Party or any of its Subsidiaries is a party, keep such leases in full force and effect and

not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify the Administrative Agent of any default by any party with respect to such leases and cooperate with the Administrative Agent in all respects to cure any such default, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

10.1.15. Use of Proceeds. Use the proceeds of Loans and the issuance of Letters of Credit solely for the purposes set forth in **Section 2.1.3**.

10.1.16. Lien Searches. Promptly following receipt of the acknowledgment copy of any financing statements filed under the UCC or the PPSA in any jurisdiction (or the equivalent in any foreign jurisdiction) by or on behalf of the Secured Parties, deliver to the Agents completed requests for information listing such financing statement and all other effective financing statements filed in such jurisdiction that name any Loan Party as debtor, together with copies of such other financing statements.

10.1.17. Lien Waivers and Lien Priority Agreements. Use commercially reasonable efforts to deliver not later than 45 days after the opening of any new location, Lien Waivers for each distribution center, warehouse or storage facility at which Collateral is located; provided, that the Loan Parties shall use commercially reasonable efforts to deliver not later than 10 days after the opening of any new location in a province or territory of Canada in which there is no PPSA registration, Lien Waivers for each distribution center, warehouse or storage facility at which Collateral is located. Each Loan Party shall, and shall cause each of its Subsidiaries to, use commercially reasonable efforts to deliver a Lien Priority Agreement for each of the Loan Party s locations in the province of Québec, Canada with respect to which registered hypothecs have priority over the Lien of the Applicable Agent in any of the Collateral.

10.1.18. Sales Taxes. If requested by the Applicable Agent, all or any portion of any Loan will be set aside by the relevant Borrower to cover such Borrower s obligations for overdue sales or goods and services Tax on account of sales since the then most recent Borrowing pursuant to the Notice of Borrowing delivered in connection therewith.

10.1.19. [Reserved]

10.1.20. Lenders Meetings. Upon the request of the Administrative Agent or the Required Lenders, participate in a meeting of the Agents and the Lenders once during each Fiscal Year to be held at the Borrowers corporate offices (or at such other location as may be agreed to by the Borrowers and the Administrative Agent) at such time as may be agreed to by the Borrowers and the Agents.

10.1.21. Communication with Accountants. Upon the Administrative Agent s reasonable request, authorize and instruct that the Borrowers independent certified public accountants communicate with the Administrative Agent with respect to the financial condition of the Borrowers and their Subsidiaries and make available all documents and other information reasonable requested by any Agent; provided that the Borrowers and the other Loan Parties may participate in all such communications.

10.1.22. Further Assurances. Promptly upon request by any Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the

Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by Applicable Law, subject any Loan Party s or any of its Subsidiaries properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Security Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Security Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

10.1.23. Freight Forwarder Arrangements. Within thirty (30) days of the Closing Date, the Loan Parties shall obtain and deliver to the Applicable Agent a Lien Waiver, in form and substance satisfactory to such Applicable Agent, as to each of the freight forwarders identified in the Information Certificate delivered to the Administrative Agent on the Closing Date, unless receipt of such Lien Waiver or freight forwarder agreement is waived in writing by the Applicable Agent upon its reasonable business judgment that the costs associated with delivery of such Lien Waiver are excessive in relation to the benefits provided.

10.2. Negative Covenants. For so long as any Commitments or Obligations are outstanding, each Loan Party shall not, and shall cause each Subsidiary not to:

10.2.1. Permitted Debt. Create, incur, guarantee or suffer to exist any Debt, except:

(a) the Obligations;

(b) the Term Loan Debt;

(c)(i) the Quebec Existing Subordinated Debt in an outstanding amount not to exceed Cdn. $800,000 at any time and solely to the extent that such Debt is subject to the Quebec Existing Subordination Agreement and (ii) the Quebec New Subordinated Debt; provided that in each of clauses (i) and (ii) hereof (A) the Quebec Subordinated Debt Documents shall be in form and substance reasonably satisfactory to the Agents, (B) the Quebec Subordinated Debt shall be subject to the Quebec Subordination Agreement and (C) the aggregate outstanding principal amount of any such Quebec New Subordinated Debt shall not exceed at any time Cdn. $4,000,000 *less* the aggregate amount of the Quebec Existing Subordinated Debt;

(d) Intercompany Debt;

(e) endorsements for collection, deposit or negotiation and warranties of products or services, in each case incurred in the Ordinary Course of Business;

(f) Debt described in **Schedule 10.2.1**, but not any extensions, renewals or replacements of such Debt except (i) renewals and extensions expressly provided for in the agreements evidencing any such Debt as the same are in effect on the date of this Agreement and (ii) refinancings and extensions of any such Debt if the terms and conditions thereof are not materially less favorable (taken as a whole) to the obligor thereon or to the Lenders than the Debt being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Debt being refinanced or extended; provided that such Debt permitted under the immediately preceding clause (i) or (ii) above shall not (A) include Debt of an obligor that was not an obligor with respect to the Debt being extended, renewed or refinanced, (B) exceed in a principal amount the Debt being renewed, extended or refinanced, except by

an amount equal to a premium on or other amount paid and fees and expenses reasonably incurred in connection with such renewal, extension or refinancing or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(g) Debt incurred in connection with the acquisition, lease or leasing after the Closing Date of any equipment or fixtures by a Loan Party or under any Capital Lease, provided that the aggregate principal amount of such Debt of the Loan Parties shall not exceed the Dollar Equivalent of $10,000,000 at any one time;

(h) the Brinkhaus Subordinated Debt, provided that the aggregate principal amount of such Brinkhaus Subordinated Debt shall not exceed at any time Cdn. $5,100,000, *less* all principal amounts paid on the Brinkhaus Subordinated Debt;

(i) the Rhode Island Debt, provided that the aggregate principal amount of such Rhode Island Debt shall not exceed at any time $1,200,000 *less* all principal amounts paid on the Rhode Island Debt;

(j) such other unsecured Debt that is expressly subordinated to the Full Payment of the Obligations on terms and conditions and pursuant to a subordination agreement acceptable to the Agents; provided that the aggregate principal amount of such Debt of the Loan Parties shall not exceed the Dollar Equivalent of $5,000,000 at any one time; and

(k) unsecured Debt constituting the Management Debt to the extent subject to the Management Subordination Agreement.

10.2.2. Permitted Liens. Create or suffer to exist any Lien upon any of its Property, except the following (collectively, Permitted Liens):

(a) Liens in favor of the Agents (or any of them) for the benefit of the Secured Parties granted pursuant to any Loan Document;

(b) Liens securing the Term Loan Debt; provided that such Liens are expressly subordinate and junior in priority to the Liens securing the Obligations pursuant to the Intercreditor Agreement;

(c) Liens to secure Taxes in respect of obligations not overdue or being Properly Contested, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, or Liens on Properties to secure claims for labor, material or supplies in respect of obligations not overdue or being Properly Contested, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) deposits or pledges made in connection with, or to secure payment of, workmen s compensation, unemployment insurance, old age pensions or other social security or like obligations;

(e) Liens on Properties in respect of judgments or awards that have been in force for less than the applicable period for taking an appeal so long as execution is not levied thereunder or in respect of which a Borrower or any such Subsidiary shall at the time in good faith be prosecuting an appeal or proceedings for review and in respect of which a stay of execution shall have been obtained pending such appeal or review;

(f) Liens of carriers, warehousemen, mechanics and materialmen, and other like Liens on Properties, in existence less than 120 days from the date of creation thereof in respect of obligations not overdue or being Properly Contested, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(g) encumbrances on Real Estate consisting of easements, servitudes, rights of way, zoning restrictions, restrictions on the use of Real Estate and defects and irregularities in the title thereto, landlord s or lessor s liens and other minor Liens, provided that none of such Liens (A) interferes materially with the use of the Property affected in the Ordinary Course of Business, and (B) individually or in the aggregate has, or could reasonably be expected to have, a Material Adverse Effect;

(h) Liens existing on the date hereof (other than Permitted Liens pursuant to clauses (a), (b), (j), (m), (n) and (p)) and listed on **Schedule 10.2.2** hereto;

(i) purchase money security interests in or purchase money mortgages or vendors hypothecs on Property acquired after the date hereof to secure purchase money Debt of the type and amount permitted by **Section 10.2.1(g)**, incurred in connection with the acquisition of such Property, which security interests, vendors hypothecs, mortgages, conditional sales agreements, installment sales agreements or other like title retention agreements with respect to Property acquired cover only the Property so acquired, together with the accessories thereto and proceeds thereof;

(j) the Rolex Liens;

(k) Liens of a bank or financial institution with respect to funds deposited with such institution, including in respect of contractual rights of set-off;

(l) Liens representing the replacement, extension or renewal of any Liens permitted in clauses (a) through (k) above, provided that (A) any such replacement, extension or renewal Liens shall encumber the same Property (and no additional Property of the Loan Parties) as covered by the Liens that are so replaced, extended or renewed, and (B) the aggregate amount of Debt secured by such Property has not increased as a result of or in connection with such replacement, extension or renewal;

(m) Liens securing the Quebec Subordinated Debt permitted pursuant to **Section 10.2.1(c)**, provided that such Liens shall, at all times be, subordinate and junior in priority to the Liens securing the Obligations pursuant to the Quebec Subordination Agreement;

(n) Liens securing the Brinkhaus Subordinated Debt permitted under **Section 10.2.1(h)**, provided that such Liens do not extend to any assets other than those acquired under the Acquisition Agreement at the time of closing thereof pursuant to the terms of the Acquisition Agreement and shall, at all times be, subordinate and junior in priority to the Liens securing the Obligations pursuant to the Brinkhaus Subordination Agreement;

(o) Liens created in connection with any goods or merchandise on consignment in which any Loan Party acts as consignor , provided that the Borrowers shall have delivered written notice to the Administrative Agent of the applicable Loan Party s intention to enter into such consignment arrangements at least ten (10) days prior to the entry thereof and shall have provided the Administrative Agent complete copies of the proposed consignment agreements (if any); and

(p) Liens securing the Rhode Island Debt permitted under **Section 10.2.1(i)**, provided that such Liens do not extend to any assets other than those granted under the Rhode Island Debt Documents at the time of closing thereof pursuant to the terms of the Rhode Island Debt Documents and shall, at all times be, subordinate and junior in priority to the Liens securing the Obligations pursuant to the Rhode Island Subordination Agreement.

10.2.3. Equitable Lien. If any Loan Party shall create or assume any Lien upon any of its Properties, whether now owned or hereafter acquired, other than Permitted Liens, it shall make or cause to be made effective provisions whereby the Obligations will be secured by such Lien equally and ratably with any and all other Debt secured thereby as long as any such Debt shall be so secured; provided that, notwithstanding the foregoing, this covenant shall not be construed as a consent by the Required Lenders to the creation or assumption of any such Lien not otherwise permitted hereby. No Loan Party shall grant any Lien on any Property to the Term Loan Lenders unless such Loan Party grants a Lien on such Property to the Applicable Agent on a first priority basis.

10.2.4. No Further Negative Pledges. Enter into any agreement prohibiting the creation or assumption of any Lien upon any of its Properties (other than the Loan Documents and the Term Loan Documents), whether now owned or hereafter acquired, except with respect to (a) restrictions on specific assets which assets are the subject of purchase money security interests to the extent permitted under **Section 10.2.2(i)**, and (b) customary anti-assignment provisions contained in leases and licensing and other agreements entered into by a Loan Party in the Ordinary Course of Business.

10.2.5. Reserved.

10.2.6. Restricted Junior Payments. Through any manner or means or through any other Person, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except:

(a) the Borrowers shall be permitted to declare dividends or distributions on or in respect of any shares of any class of Capital Stock of the Borrowers on a quarterly basis but in any event not later than forty-five (45) days after each date on which the Borrowers deliver their financial statements to the Lenders in accordance with **Section 10.1.2(b)**, in each case in an amount not to exceed 33% of Consolidated Net Income for the twelve month period ended as of each such Fiscal Quarter, provided that (i) Fixed Charge Coverage Ratio, measured on a pro forma basis after giving effect to any such payment, is greater than 1.30:1.00, (ii) the aggregate amount of such dividends and distributions actually paid by the Borrowers during the twelve month period ended as of any Fiscal Quarter end shall not exceed 33% of Consolidated Net Income for such twelve month period, (iii) no Default or Event of Default shall have occurred and be continuing at the time such dividends and distributions are made or would result therefrom and (iv) Aggregate Excess Availability shall be greater than or equal to $30,000,000 (A) at all times during the thirty (30) day period preceding the date any such dividends and distributions are made, (B) immediately after giving effect to the making of any such dividends and distributions and (C) on a prospective basis (as demonstrated pursuant to projections of the Borrowers of the type described in **Section 10.1.2(g)**, in form and substance reasonably satisfactory to the Agents, which shall have been delivered to the Agents prior to the date of any such dividends and distributions are made), at all times during the twelve month period commencing on the date any such dividends and distributions are made;

(b) the Borrowers and the Guarantors shall be permitted to make any payments of principal and interest on any Intercompany Debt to the extent permitted under **Section 10.2.12**; and

(c) the Borrowers shall be permitted to make any payment of the Management Debt to the extent expressly permitted under the Management Subordination Agreement and no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom.

10.2.7. Restrictions on Subsidiary Distributions. Except as provided herein and in the Term Loan Documents, the Borrowers shall not, and shall not permit any Subsidiary of the Borrowers to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of the Borrowers to (a) pay dividends or make any other distributions on any of such Subsidiary s Capital Stock owned by any Borrower or any other Subsidiary of any Borrower, (b) repay or prepay any Debt owed by such Subsidiary to any Borrower or any other Subsidiary of such Borrower, (c) make loans or advances to the Borrowers or any other Subsidiary of the Borrowers, or (d) transfer any of its property or assets to the Borrowers or any other Subsidiary of the Borrowers other than restrictions (i) in agreements evidencing Debt permitted by **Sections 10.2.1(g)** that impose restrictions on the property so acquired, (ii) in any Contractual Obligation listed in **Schedule 10.2.7** in effect on the Closing Date and (iii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the Ordinary Course of Business.

10.2.8. Reserved.

10.2.9. Investments. Directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture, except:

(a) Investments in cash and Cash Equivalents;

(b) Investments existing on the date hereof and listed on **Schedule 9.1.6(b)** hereto;

(c) Investments consisting of Intercompany Debt to the extent permitted pursuant to **Section 10.2.1(d)**;

(d) Investments consisting of promissory notes received as proceeds of asset dispositions permitted pursuant to **Section 10.2.13(b)**;

(e) Investments consisting of loans and advances to employees for moving, entertainment, travel and other similar expenses in the Ordinary Course of Business not to exceed the Dollar Equivalent of $250,000 in the aggregate at any time outstanding, other than any loans or advances that would be in violation of Section 402 of Sarbanes-Oxley;

(f) Investments by the Borrowers or any Guarantor in BME IPCO in an amount not to exceed, in the aggregate, the sum of (i) the royalty payments required to be paid by the Borrowers or any of their respective Subsidiaries under Section 7.2 of the BME IPCO Distribution Agreement, plus (ii) the Dollar Equivalent of $250,000 in the aggregate in any Fiscal Year, provided, that no Default or Event of Default shall then be continuing under this Agreement;

provided, however, that, with the exception of Investments referred to in clause (f) of this **Section 10.2.9**, such Investments will be considered Investments permitted by this **Section 10.2.9**, only if all actions have been taken to the satisfaction of the Administrative Agent to provide to the Applicable Agent, for the benefit of the Lenders and the Agents, a first priority perfected security interest in all of such Investments free of all Liens other than Permitted Liens entitled to priority under Applicable Law

10.2.10. Prepayment and Cancellation of Certain Debt. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, any Debt (including, without limitation, (a) any Intercompany Debt or Management Debt, unless otherwise permitted pursuant to **Section 10.2.6**, or (b) the Term Loan Debt, the Brinkhaus Subordinated Debt, the Quebec Subordinated Debt or the Rhode Island Debt prior to its due date under the agreements evidencing such Debt as in effect on the Closing Date (or as amended thereafter in accordance with **Section 10.2.11**), unless otherwise permitted pursuant to **Section 10.2.12**.

10.2.11. Amendments or Waivers of Term Loan Documents, Brinkhaus Subordinated Debt Documents, Management Agreement, Quebec Subordinated Debt Documents, Rhode Island Debt Documents and Organizational Documents. (a) Agree to any amendment, restatement, supplement or other modification to, or waiver of any of its material rights under, the Term Loan Documents except to the extent expressly permitted under the Intercreditor Agreement, the Brinkhaus Subordinated Debt Documents, the Management Agreement except to the extent expressly permitted by the Management Subordination Agreement, the Quebec Subordinated Debt Documents or the Rhode Island Debt Documents, without in each case obtaining the prior written consent of the Required Lenders to such amendment, restatement, supplement or other modification or waiver; or (b) amend, modify or change any of its Organizational Documents (including by the filing or modification of any certificate of designation), other than any such amendments, modifications or changes which are not adverse in any material respect to the interests of the Lenders. Each Loan Party shall deliver to the Administrative Agent complete and correct copies of any amendment, restatement, supplement or other modification to or waiver of the Term Loan Documents, the Brinkhaus Subordinated Debt Documents, the Management Agreement, the Quebec Subordinated Debt Documents, the Rhode Island Debt Documents or Organizational Documents.

10.2.12. Subordinated Debt; Term Loan Debt.

(a) Make any payments in respect of the Brinkhaus Subordinated Debt other than regularly scheduled payments of principal so long as (i) (A) no more than fifteen (15) days and no less than five (5) days prior to any proposed payment, the Agents shall have received written notice from the Subordinating Party (as defined in the Brinkhaus Subordination Agreement) setting forth the amount and date of such scheduled payment and the Agents shall not have notified the Subordinating Party in writing at any time prior to the making of such payment that the payment is not permitted under this Agreement, (B) no more than five (5) days and no less than three (3) days prior to any proposed payment, the Agents shall have received evidence satisfactory to the Agents that the Aggregate Excess Availability (calculated on a pro forma basis after taking into consideration the payment to be made) shall be not less than $12,000,000, and (C) if such scheduled payment is permitted as provided in this Agreement, such scheduled payment shall be made no later than April 30th of such Fiscal Year (unless otherwise consented to in writing by the Agents in their sole and absolute discretion), and (ii) no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom. No prepayment of, or payments of interest on, the Brinkhaus Subordinated Debt may be made without the prior written consent of the Agents in their sole discretion.

(b) Make any payments in respect of the Quebec Subordinated Debt; provided, that the Loan Parties may make (i) such regularly scheduled payments of principal and interest in respect of the Quebec Subordinated Debt so long as no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom, and (ii) prepayments of principal in respect of the Quebec Subordinated Debt so long as (A) Fixed Charge Coverage Ratio, measured on a pro forma basis after giving effect to any such payment, is greater than 1.10:1.00, (B) Aggregate Excess Availability as of such date (calculated on a pro forma basis after taking into consideration the payment to be made) shall be greater than an amount equal to the product of (x) thirty percent (30%) multiplied by (y) the Aggregate Borrowing Capacity (provided that, for purposes of this clause (b)(ii)(B)(y), the Aggregate Borrowing Capacity shall be calculated without deduction of the Availability Block, the Seasonal Availability Block, the Brinkhaus Reserve, the Quebec Subordinated Debt Reserve, the Loan to Value Reserve, the Term Loan Discretionary Reserve and the Tranche A-1 Reserve), (C) such payment is made within fifteen (15) days after the Borrowers have delivered to the Agents

the financial statements pursuant to **Section 10.1.2(b)**, (D) no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom and (E) not less than five (5) days prior to such payment, the Borrowers shall have delivered to the Administrative Agent a certificate certifying, and providing appropriate calculations, as to the matters set forth in clauses (A) through (D) of this clause (b)(ii).

(c) Make any principal payments in respect of the Term Loan Debt; provided, that the Loan Parties may make such principal payments so long as (i) Fixed Charge Coverage Ratio, measured on a pro forma basis after giving effect to any such payment, is greater than 1.10:1.00, (ii) Aggregate Excess Availability (calculated on a pro forma basis after taking into consideration the payment to be made) on a prospective basis (as demonstrated pursuant to final projections of the Borrowers of the type described in **Section 10.1.2(g)**, in form and substance reasonably satisfactory to the Agents, which shall have been delivered to the Agents prior to the date of any such principal payments are made), at all times during the twelve month period commencing on the date any such principal payments are made shall be greater than $20,000,000, (iii) such payment is made within fifteen (15) days after the Borrowers have delivered to the Agents the financial statements pursuant to **Section 10.1.2(b)**, (iv) no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom and (v) not less than five (5) days prior to such payment, the Borrowers shall have delivered to the Administrative Agent a certificate certifying, and providing appropriate calculations, as to the matters set forth in clauses (i) through (iv) of this clause (c).

(d) Make any payments in respect of any Intercompany Debt; provided, that the Loan Parties may make such principal and interest payments so long as no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom.

(e) Make any payments in respect of the Rhode Island Debt; provided, that the Loan Parties may make (i) regularly scheduled payments of principal and interest in respect of the Rhode Island Debt so long as no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom and (ii) prepayments of principal in respect of the Rhode Island Debt so long as (A) Fixed Charge Coverage Ratio, measured on a pro forma basis after giving effect to any such payment, is greater than 1.10:1.00, (B) Aggregate Excess Availability as of such date (calculated on a pro forma basis after taking into consideration the payment to be made) shall be greater than an amount equal to the product of (x) thirty percent (30%) multiplied by (y) the Aggregate Borrowing Capacity (provided that, for purposes of this clause (e)(ii)(B)(y), the Aggregate Borrowing Capacity shall be calculated without deduction of the Availability Block, the Seasonal Availability Block, the Brinkhaus Reserve, the Quebec Subordinated Debt Reserve, the Loan to Value Reserve, the Term Loan Discretionary Reserve and the Tranche A-1 Reserve), (C) such payment is made within fifteen (15) days after the Borrowers have delivered to the Agents the financial statements pursuant to **Section 10.1.2(b)**, (D) no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom and (v) not less than five (5) days prior to such payment, the Borrowers shall have delivered to the Administrative Agent a certificate certifying, and providing appropriate calculations, as to the matters set forth in clauses (A) through (D) of this clause (e)(ii).

10.2.13. Fundamental Changes; Asset Acquisition; Disposition of Assets.

(a) Become a party to any merger, amalgamation or consolidation, or agree to or effect any asset acquisition or stock acquisition (other than the acquisition of assets in the Ordinary Course of Business consistent with past practices) except (i) the merger, amalgamation or consolidation of one or more of the Subsidiaries of the Borrowers (other than a Borrower) or the Guarantors (other than a Borrower) with and into one of the Borrowers or the Guarantors, provided that (A) in the event of any merger, amalgamation or consolidation of a Borrower and a Guarantor (other than a Borrower), such Borrower shall be the continuing or surviving Person and (B) other than as described in clause (a)(i)(A) herein, in the event that any Borrower or any Guarantor (other than a Borrower) is a party to such merger, amalgamation or consolidation, such Borrower or such Guarantor shall be the continuing or surviving Person, (ii) the merger, amalgamation or consolidation of two or more Subsidiaries of the Borrowers (other than a Borrower) or the Guarantors (other than a Borrower), provided that in the event any Guarantor is a party to such merger, amalgamation, consolidation, asset acquisition or stock acquisition, such Guarantor shall be the continuing or surviving Person or (iii) any other mergers, amalgamations, consolidations, asset acquisitions or stock acquisitions not otherwise contemplated pursuant to this **Section 10.2.13(a)** in an aggregate amount not to exceed the Dollar Equivalent of $5,000,000, provided that, in each case, (x) in the event any Borrower is a party to such merger, amalgamation, consolidation, asset acquisition or stock acquisition, such Borrower shall be the continuing or surviving Person; (y) the relevant Borrower or Guarantor takes all actions required by the Applicable Agent in order for the Applicable Agent to acquire a perfected, first priority security interest in such newly acquired assets or stock; and (z) in the case of an asset acquisition or a stock acquisition by any Loan Party, such Loan Party shall, at such Loan Party s expense, cause any new Subsidiary (other than a Non-Material Subsidiary) formed or acquired thereby to (A) join this Agreement and the other Loan Documents as required pursuant to **Section 10.1.9** and (B) if any shares of Capital Stock or Debt of such Subsidiary are owned by or on behalf of any Loan Party, such Loan Party shall cause such shares and promissory notes evidencing such Debt to be pledged to the Administrative Agent within 45 days after such Subsidiary is formed or acquired, provided that in no event shall compliance with this **Section 10.2.13(a)** waive or be deemed a waiver or consent to any transaction giving rise to the need to comply with this **Section 10.2.13(a)** if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any such Subsidiary, an approval of such Person as a Borrower or Guarantor or permit the inclusion of any acquired assets in the computation of the Aggregate Borrowing Capacity or Term Loan Borrowing Capacity (in each case, or any component definition thereof); or

(b) Become a party to or agree to or effect any sale, lease, license, consignment, transfer or other disposition of assets, other than (i) the sale of Inventory, the licensing of Intellectual Property and the disposition of obsolete assets, in each case in the Ordinary Course of Business and to a Person other than a Non-Material Subsidiary, and (ii) the sale of Inventory and other assets to a Person other than a Non-Material Subsidiary outside the Ordinary Course of Business in connection with Permitted Store Closings.

10.2.14. Sales and Leasebacks. Except for sales of equipment in the Ordinary Course of Business to a Person other than a Non-Material Subsidiary, enter into any arrangement, directly or indirectly, whereby any Loan Party shall sell or transfer any Property owned by it in order then or thereafter to lease such Property or lease other Property that such Loan Party intends to use for substantially the same purpose as the Property being sold or transferred.

10.2.15. Transactions with Affiliates. Directly or indirectly, engage in any transaction with any Affiliate (other than for services as employees, officers and directors, including employee discounts consistent with past practices), 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 such Affiliate or, to the knowledge of the Borrowers, any corporation, partnership, trust or other Person in which any such Affiliate has a substantial interest or is an officer, director, trustee or partner, except to the extent (i) such Person is not a Non-Material Subsidiary, and (ii) on terms more favorable to such Person than would have been obtainable on an arm s-length basis with an unrelated party in the Ordinary Course of Business.

10.2.16. Business Activities; Permitted Store Closings. (a) Engage directly or indirectly (whether through the Subsidiaries or otherwise) in any type of business other than the businesses conducted by the Loan Parties on the Closing Date and in related businesses, (b) execute, alter, modify, or amend any lease; provided, however, that the Loan Parties may (i) alter, modify or amend any lease in a manner beneficial to the Loan Parties so long as any such alteration, modification or amendment does not adversely affect any rights of the Agents or the Lenders hereunder and (ii) the Loan Parties may terminate the leases on the retail locations (A) listed on **Schedule 10.2.16** hereto or (B) which otherwise constitute a Permitted Store Closing and are not listed on **Schedule 10.2.16**, or (c) except as provided in clause (b) hereof, commit to, or open or close any location at which a Loan Party maintains, offers for sales, or stores any of the Collateral.

10.2.17. Accounting Changes; Fiscal Year; Tax Consolidation. (a) Make or permit any material change, any change which would have a material impact on the results of operations or financial condition or financial statements or make any change which would be determinative as to whether or not the Borrowers and their Subsidiaries would be in compliance with any of the covenants set forth in **Section 10.2** and **Section 10.3** hereof, in accounting policies or reporting practices, without the consent of the Administrative Agent, which consent shall not be unreasonably withheld, except changes that are required by or permitted under GAAP or (b) change its Fiscal Year end from the last Saturday of March of each year.

10.2.18. Margin Regulations. Use all or any portion of the proceeds of any credit extended hereunder to purchase or carry margin stock (within the meaning of Regulation U of the Federal Reserve Board) in contravention of Regulation U of the Federal Reserve Board.

10.2.19. Hedging Agreements. Enter into any Hedging Agreement.

10.2.20. No Speculative Transactions. Engage in any transaction involving commodity options, futures contracts or similar transactions.

10.2.21. Amendment of Rolex Documents. Amend any provision of any Rolex Document in a manner adverse to the Administrative Agent and the Secured Parties without the prior written consent of the Administrative Agent.

10.2.22. Canadian Subsidiaries. Permit the Canadian Borrower to have any Subsidiary other than the US Borrower and BME IPCO.

10.2.23. Non-Material Subsidiaries. Permit any Non-Material Subsidiary to acquire any assets.

10.2.24. Jose Hess Trademark. Permit any Loan Party or any Subsidiary of a Loan Party to use the Jose Hess & Design trademark with registration number 1,100,692 until such trademark has been assigned to a Loan Party and the security interest and Lien of the Administrative Agent is properly recorded against such trademark with the United States Patent and Trademark Office.

10.2.25. Certain Consignment Arrangements. Permit any Loan Party or any Subsidiary of a Loan Party to hold any consigned inventory from any of Clover Corporation, M. Fabrikant & Sons, Inc. or S.H.R. Inc. unless and until the Administrative Agent shall have received evidence satisfactory to the Administrative Agent that any UCC filings on record or to be recorded in respect of any consignment arrangements made by such Persons are satisfactory to the Administrative Agent.

SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

11.1. Events of Default. Each of the following shall be an Event of Default hereunder, if the same shall occur for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) Any Borrower fails to pay any principal of the Loans, any US LC Obligation, any Canadian LC Obligation, any interest on the Loans, any fee or any other amount payable under this Agreement or any other Loan Document, when and as the same shall become due and payable (whether at stated maturity, on demand, upon acceleration or otherwise); or

(b)(i) Any information contained in any Compliance Certificate or Borrowing Base Certificate was untrue or incorrect in any material respect when made or (ii) any representation or warranty made or delivered to any Agent or any Lender by any Loan Party herein, in connection with any Loan Document or transaction contemplated thereby, or in any written statement, report, financial statement or certificate (other than a Borrowing Base Certificate or Compliance Certificate) is untrue, incorrect or misleading in any material respect when given or confirmed; or

(c)(i) Any Loan Party breaches or fails to perform any covenant contained in **Section 7**, **8**, **10.1** (other than **Section 10.1.2(a), (b), (c) or (g)**) or **10.2**; and (ii) any Loan Party breaches or fails to perform any covenant contained **Section 10.1.2(a), (b), (c) or (g)** for five (5) days after the date otherwise set forth in such section as a deadline for compliance thereof; or

(d) Any Loan Party breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 15 days after a Senior Officer of such Loan Party receives notice thereof from any Agent; provided, however, that such notice and opportunity to cure shall not apply if the breach or failure to perform is not capable of being cured within such period; or

(e) Any Guarantor repudiates, revokes or attempts to revoke its Guaranty; any Loan Party denies or contests the validity or enforceability of any Loan Documents or Obligations, or the perfection or priority of any Lien granted to any Agent; or any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by the Agents and the Lenders) or any Loan Party shall so state in writing; or

(f) Any judgment or order for the payment of money is entered against a Loan Party or any of its Subsidiaries in an amount that exceeds, individually or cumulatively with all unsatisfied judgments or orders against all the Loan Parties and their Subsidiaries, the Dollar Equivalent of $1,000,000 (net of any insurance coverage therefor acknowledged in writing by the insurer), and shall remain unsatisfied, undischarged, unvacated, unbonded or unstayed for a period of 30 days; or

(g) Any Loan Party or any of its Subsidiaries becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any Loan Party or any of its Subsidiaries and is not released, vacated or fully bonded within 45 days after its issue or levy; or

(h) Any loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance exceeds the Dollar Equivalent of $1,000,000; or

(i) Any Loan Party or any of its Subsidiaries is enjoined, restrained or in any way prevented by any Governmental Authority from conducting (i) any material part of its business or (ii) business at more than 10 retail locations, and such order shall continue in effect for more than 5 days; any Loan Party or any of its Subsidiaries suffers the loss, revocation or termination of any material license, permit, lease or agreement necessary to its business and such loss, revocation or termination shall continue unremedied for 5 days; there is a cessation of any material part of a Loan Party s or any of its Subsidiaries business for a material period of time; any Collateral or Property of a Loan Party or any of its Subsidiaries is taken or impaired through condemnation and such loss, revocation or termination is reasonably likely to result in a Material Adverse Effect; any Loan Party or any of its Subsidiaries agrees to or commences any liquidation, dissolution or winding up of its affairs; or any Loan Party or any of its Subsidiaries ceases to be Solvent; or

(j) Any Insolvency Proceeding is commenced by any Loan Party or any of its Subsidiaries; an Insolvency Proceeding is commenced against any Loan Party or any of its Subsidiaries and such Loan Party or such Subsidiary consents to the institution of the proceeding against it, the petition, filing or other proceeding commencing the proceeding is not timely controverted by such Loan Party or such Subsidiary, such petition, filing or other proceeding is not dismissed or stayed within 45 days after its filing or institution, or an order for relief is entered in the proceeding; a trustee (including an interim trustee), receiver (including an interim receiver or receiver-manager), monitor, agent, custodian, sequestrator, administrator, liquidator or like official is appointed to take possession of any substantial Property of or to operate any of the business of any Loan Party or any of its Subsidiaries; or any Loan Party or any of its Subsidiaries makes a proposal or offer (or files a notice of intention to make a proposal or offer) of settlement, extension, arrangements or composition to its unsecured creditors generally; or

(k) The Borrowers or any ERISA Affiliate incurs any liability to the PBGC or a Guaranteed Pension Plan pursuant to Title IV of ERISA in an aggregate amount exceeding the Dollar Equivalent of $100,000, or the Borrowers or any ERISA Affiliate is assessed withdrawal liability pursuant to Title IV of ERISA by a Multiemployer Plan requiring aggregate annual payments exceeding the Dollar Equivalent of $100,000, the receipt by the Borrowers or any ERISA Affiliate of notice from any Multiemployer Plan that it is in critical or endangered status, pursuant to Section 432 of the Code and Section 305 of ERISA, or any of the following occurs with respect to a Guaranteed Pension Plan: (i) an ERISA Reportable Event, or a failure to satisfy the minimum funding standards under the Pension Funding Rules, provided that the Administrative Agent determines in its reasonable discretion that such event (A) could be expected to result in a liability of the Borrowers or any of their Subsidiaries to the PBGC or such Guaranteed Pension Plan in an aggregate amount exceeding the Dollar Equivalent of $500,000 and (B) could constitute grounds for the termination of such Guaranteed Pension Plan by the PBGC, for the appointment by the appropriate United States District Court of a trustee to administer such Guaranteed Pension Plan or for the imposition of a Lien in favor of such Guaranteed Pension Plan; or (ii) the appointment by a United States District Court of a trustee to administer such Guaranteed Pension Plan; or (iii) the institution by the PBGC of proceedings to terminate such Guaranteed Pension Plan; or (iv) any event or condition shall occur or exist with respect to a Canadian Plan that could, in the Administrative Agent s good faith judgment, subject any Canadian Loan Party or any of its Subsidiaries to any tax, penalty or other liabilities under the *Supplemental Pension Plans Act* (Québec) or the *Pension Benefits Act* (Ontario) or any other Applicable Pension Legislation and which could reasonably be expected to give rise to a Material Adverse Effect, or if any Canadian Loan Party or any of its Subsidiaries is in default with respect to required payments to a Canadian Plan or any Lien arises (save for contribution amounts not yet due) in connection with any Canadian Plan; or

(l) Any Loan Party or any of its Subsidiaries is criminally indicted or convicted for (i) a felony committed in the conduct of such Person s business, or (ii) any state, federal or foreign Applicable Law (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act) that could lead to forfeiture of any assets of such Person included in the US Borrowing Capacity, the Canadian Borrowing Capacity, the Tranche A-1 Borrowing Capacity or the Term Loan Borrowing Capacity or any assets of such Person not included in the US Borrowing Capacity, the Canadian Borrowing Capacity, the Tranche A-1 Borrowing Capacity or the Term Loan Borrowing Capacity but having a fair market value in excess of the Dollar Equivalent of $1,000,000; or

(m)(i) any breach or default of a Loan Party or any of its Subsidiaries occurs under any of the Term Loan Documents (or any documents relating to renewals, refinancings and extensions of the Debt incurred thereunder) or (ii) any such Debt shall become or be declared to be due and payable, or be required to be prepaid or repurchased (other than by a regularly scheduled or required prepayment), prior to the stated maturity thereof; provided that such breach or default shall be deemed continuing hereunder until the Applicable Agent or the Required Lenders have expressly waived such breach or default in writing, notwithstanding the fact that such breach or default may have been waived under the terms of the Term Loan Documents; or

(n)(i) the earlier of (A) receipt by a Loan Party or any of its Subsidiaries of notice from any applicable party under any of the Brinkhaus Subordinated Debt Documents, the Quebec Subordinated Debt Documents, the Rhode Island Debt Documents or the Rolex Documents of the occurrence and continuance of a payment default or the occurrence of a payment default under any of such agreements which has continued for fifteen (15) days or (B) any other material breach or default of a Loan Party or any of its Subsidiaries occurs under any of the Brinkhaus Subordinated Debt Documents, the Quebec Subordinated Debt Documents, the Rhode Island Debt Documents or the Rolex Documents (or any documents relating to renewals, refinancings and extensions of the Debt incurred thereunder) or (ii) any such Debt shall become or be declared to be due and payable, or be required to be prepaid or repurchased (other than by a regularly scheduled or required prepayment), prior to the stated maturity thereof; or

(o) Subject to **Section 11.1(n)**, (i) any breach or default of a Loan Party or any of its Subsidiaries occurs under any document, instrument or agreement to which it is a party or by which it or any of its Properties is bound, relating to any Debt (other than the Obligations) in excess of the Dollar Equivalent of $1,000,000, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach or default or (ii) any such Debt shall become or be declared to be due and payable, or be required to be prepaid or repurchased (other than by a regularly scheduled or required prepayment), prior to the stated maturity thereof; or

(p) There shall occur any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty, which in any such case causes, for more than 5 consecutive days, the cessation or substantial curtailment of revenue producing activities at more than 5 retail locations not covered by business interruption insurance; or

(q)(i) Any Security Document shall for any reason fail or cease to create valid, perfected and enforceable Liens on any Collateral purported to be covered thereby or, except as permitted by the Loan Documents, such Liens shall fail or cease to be a perfected with the priorities contemplated by the Intercreditor Agreement, the Brinkhaus Subordination Agreement, the Quebec

Subordination Agreement, the Rhode Island Subordination Agreement, the Rolex Subordination Agreement and the other Security Documents, or any Loan Party shall so state in writing; or (ii) any breach or default by any Person (other than any Agent party thereto) occurs under any Subordination Agreement or the Intercreditor Agreement; or (iii) any Person (other than any Agent party thereto) shall repudiate, revoke or attempt to revoke any Subordination Agreement or the Intercreditor Agreement; or (iv) any of the terms of any Subordination Agreement or the Intercreditor Agreement shall be invalidated or cease to be in full force and effect; or

(r) A Change of Control occurs.

11.2. Remedies upon Default. If an Event of Default described in **Section 11.1(j)** occurs with respect to any Loan Party, then to the extent permitted by Applicable Law, all Obligations shall become automatically due and payable and all Commitments shall terminate, without any action by any Agent or notice of any kind. In addition, or if any other Event of Default exists, each Agent may in its discretion (and shall upon written direction of the Required Lenders) do any one or more of the following from time to time:

(a) declare any Obligations immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by the Loan Parties to the fullest extent permitted by law;

(b) terminate, reduce or condition any of the Commitments, or make any adjustment to the US Borrowing Capacity, the Canadian Borrowing Capacity, the Tranche A-1 Borrowing Capacity or the Term Loan Borrowing Capacity;

(c) require the Loan Parties to Cash Collateralize US LC Obligations, the Canadian LC Obligations, Bank Product Debt and other Obligations that are contingent or not yet due and payable, and, if the Loan Parties fail promptly to deposit such Cash Collateral, the Applicable Agent may (and shall upon the direction of the Required Lenders) advance the required Cash Collateral as US Revolver Loans or, as applicable, Canadian Revolver Loans (whether or not a US Revolver Overadvance or Canadian Revolver Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied); and

(d) with respect to any Collateral consisting of Inventory, conduct one or more going out of business sales, in the Administrative Agent s own right or by one or more agents, representatives, receivers and contractors. Such sale(s) may be conducted upon any premises owned, leased, or occupied by any Loan Party, and in conjunction with any such sale, (i) the Administrative Agent and any such agent, representative, receiver or contractor may augment the Inventory with other goods (all of which other goods shall remain the sole property of the Administrative Agent or such agent or contractor), (ii) 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 Administrative Agent or such agent or contractor and no Loan Party nor any Person claiming under or in right of such Loan Party shall have any interest therein, (iii) each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Loan Party, and, to the extent permitted by Applicable Law, each Loan Party hereby waives all rights of redemption, stay, valuation and appraisal which such Loan Party now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted; and

(e) exercise any other rights or remedies afforded under any agreement (including, without limitation, this Agreement and the other Loan Documents), by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC,

the PPSA, the Civil Code of Québec or Applicable Law. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require the Loan Parties to assemble Collateral, at the Borrowers expense, and make it available to the Applicable Agent at a place designated by such Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by a Loan Party, the Loan Parties agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as the Applicable Agent, in its discretion, deems advisable. Each Loan Party agrees that 5 days notice of any proposed sale or other disposition of Collateral by the Applicable Agent shall be reasonable. The Applicable Agent shall have the right to conduct such sales on any Loan Party s premises, without charge, and such sales may be adjourned from time to time in accordance with Applicable Law. The Applicable Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and the Applicable Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may set off the amount of such price against the Obligations.

11.3. License. Each Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of the Loan Parties, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral in each case after the occurrence, and during the continuance, of an Event of Default.

11.4. Setoff. The Agents, the Lenders and their Affiliates are each authorized by the Loan Parties at any time that an Event of Default has occurred and is continuing, without notice to the Loan Parties or any other Person, to set off and to appropriate and apply any deposits (general or special), funds, claims, obligations, liabilities or other Debt at any time held or owing by any Agent, any Lender or any such Affiliate to or for the account of any Loan Party against any Obligations, whether or not demand for payment of such Obligation has been made, any Obligations have been declared due and payable, are then due, or are contingent or unmatured, or the Collateral or any guaranty or other security for the Obligations is adequate.

11.5. Remedies Cumulative; No Waiver.

11.5.1. Cumulative Rights. All covenants, conditions, provisions, warranties, guaranties, indemnities and other undertakings of the Loan Parties contained in the Loan Documents are cumulative and not in derogation or substitution of each other. In particular, the rights and remedies of the Agents and the Lenders are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and shall not be exclusive of any other rights or remedies that the Agents and the Lenders may have, whether under any agreement, by law, at equity or otherwise.

11.5.2. Waivers. The failure or delay of any party hereto to require strict performance by any other party thereto with any terms of the Loan Documents, or to exercise any rights or remedies with respect to Collateral or otherwise, shall not operate as a waiver thereof nor as establishment of a course of dealing. All rights and remedies shall continue in full force and effect until the Full Payment of the Obligations. No modification of any terms of any Loan Documents (including any waiver thereof) shall be effective, unless such modification is specifically provided in a writing directed to the Borrowers and executed by the Borrowers and the Applicable Agent(s) or the requisite Lenders, and such modification shall be applicable only to the matter specified. No waiver of any Default or Event of Default shall constitute a waiver of any other Default or Event of Default that may exist at such time, unless

expressly stated. If any Agent or any Lender accepts performance by any Loan Party under any Loan Documents in a manner other than that specified therein, or during any Default or Event of Default, or if any Agent or any Lender shall delay or exercise any right or remedy under any Loan Documents, such acceptance, delay or exercise shall not operate to waive any Default or Event of Default nor to preclude exercise of any other right or remedy.

11.6. Judgment Currency. If, for the purpose of obtaining judgment in any court or obtaining an order enforcing a judgment, it becomes necessary to convert any amount due under this Agreement in Dollars or in any other currency (hereinafter in this **Section 11.6** called the first currency) into any other currency (hereinafter in this **Section 11.6** called the second currency), then the conversion shall be made at the Applicable Agent s spot rate of exchange for buying the first currency with the second currency prevailing at the Applicable Agent s close of business on the Business Day next preceding the day on which the judgment is given or (as the case may be) the order is made. Any payment made to any Agent or any Lender pursuant to this Agreement in the second currency shall constitute a discharge of the obligations of the Borrowers to pay to the Agents and the Lenders any amount originally due to the Agents and the Lenders in the first currency under this Agreement only to the extent of the amount of the first currency which each Agent and each of the Lenders is able, on the date of the receipt by it of such payment in any second currency, to purchase, in accordance with such Agent s and such Lender s normal banking procedures, with the amount of such second currency so received. If the amount of the first currency falls short of the amount originally due to the Agents and the Lenders in the first currency under this Agreement, each of the Borrowers, with respect to itself and its Subsidiaries, agrees that it will indemnify each Agent and each of the Lenders against and save each Agent and each of the Lenders harmless from any shortfall so arising. This indemnity shall constitute an obligation of each such Borrower separate and independent from the other obligations contained in this Agreement, shall give rise to a separate and independent cause of action and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum or sums in respect of amounts due to any Agent or any Lender under this Agreement or under any such judgment or order. Any such shortfall shall be deemed to constitute a loss suffered by each Agent and each such Lender, as the case may be, and the Borrowers shall not be entitled to require any proof or evidence of any actual loss. The covenant contained in this **Section 11.6** shall survive the Full Payment of the Obligations.

SECTION 12. THE ADMINISTRATIVE AGENT AND THE CANADIAN AGENT

12.1. Appointment, Authority and Duties of the Administrative Agent and the Canadian Agent

12.1.1. Appointment and Authority of the Administrative Agent and the Canadian Agent.

(a) Each Lender appoints and designates Bank of America as the Administrative Agent hereunder. The Administrative Agent may, and each Lender authorizes the Administrative Agent to, enter into all Loan Documents (including, without limitation, the Intercreditor Agreement) to which the Administrative Agent is intended to be a party and accept all Security Documents, for the Administrative Agent s benefit and the benefit of the Secured Parties. Each Lender agrees that any action taken by the Administrative Agent or the Required Lenders, in accordance with the provisions of the Loan Documents, and the exercise by the Administrative Agent or the Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized and binding upon all Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall have the sole and exclusive authority (subject to the authority of the Canadian Agent set forth in clause (b) below) to (a) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan

Documents; (b) execute and deliver as the Administrative Agent each Loan Document to which it is intended to be a party, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from any Loan Party or other Person; (c) act as collateral agent for the Secured Parties for purposes of perfecting and administering Liens under the Loan Documents and all other matters concerning Collateral of the US Loan Parties and the Non-Canadian Loan Parties and Collateral of the Canadian Loan Parties situated in the United States, and for all other purposes stated therein; and (d) exercise all rights and remedies given to the Administrative Agent with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. The duties of the Administrative Agent shall be ministerial and administrative in nature, and the Administrative Agent shall not have a fiduciary relationship with any Lender, Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto. The Administrative Agent alone shall be authorized to determine whether any Account or Inventory constitutes Eligible Inventory, Eligible Major Credit Card Receivables or Eligible Private Label and Corporate Accounts, as the case may be, or whether to impose or release any reserve, which determinations and judgments, if exercised in good faith, shall exonerate the Administrative Agent from liability to any Lender or other Person for any error in judgment.

(b) Each Lender appoints and designates Bank of America-Canada Branch as the Canadian Agent hereunder. The Canadian Agent may, and each Lender authorizes the Canadian Agent to, enter into all Loan Documents (including, without limitation, the Intercreditor Agreement) to which the Canadian Agent is intended to be a party and accept all Security Documents, for the Canadian Agent s benefit and the benefit of the Secured Parties. Each Lender agrees that any action taken by the Canadian Agent or the Required Lenders, in accordance with the provisions of the Loan Documents, and the exercise by the Canadian Agent or the Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized and binding upon all Lenders. Without limiting the generality of the foregoing, the Canadian Agent shall have the sole and exclusive authority (subject to the authority of the Administrative Agent set forth in clause (a) above) to (a) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents concerning the Canadian Loan Parties; (b) execute and deliver as the Canadian Agent each Loan Document to which it is intended to be a party, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from any Loan Party or other Person; (c) act as collateral agent for the Secured Parties for purposes of perfecting and administering Liens under the Loan Documents and all other matters concerning Collateral of the Canadian Loan Parties and Collateral of the other Loan Parties situated in Canada, and for all other purposes stated therein; and (d) exercise all rights and remedies given to the Canadian Agent with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. The duties of the Canadian Agent shall be ministerial and administrative in nature, and the Canadian Agent shall not have a fiduciary relationship with any Lender, Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto.

(c) For the purposes of creating a *solidarité active* in accordance with Article 1541 of the Civil Code of Québec between each Secured Party, taken individually, on the one hand, and the Canadian Agent, on the other hand, each Loan Party and each such Secured Party acknowledges and agrees with the Canadian Agent that such Secured Party and the Canadian Agent are hereby conferred the legal status of solidary creditors of each such Loan Party in respect of all Obligations owed by each such Loan Party to the Canadian Agent and such Secured Party hereunder and under the other Loan Documents (collectively, the Solidary Claim) and that, accordingly, but subject (for the avoidance of doubt) to Article 1542 of the Civil Code of Québec, each such Loan Party is irrevocably bound towards the Canadian Agent and each Secured Party in respect of the entire Solidary Claim of the Canadian Agent and such Secured Party. As a result of the foregoing, the parties hereto acknowledge that the Canadian Agent and each Secured Party shall at all times have a valid and effective right of action for the entire Solidary Claim of the Canadian Agent and such Secured

Party and the right to give full acquittance for it. Accordingly, and without limiting the generality of the foregoing, the Canadian Agent, as solidary creditor with each Secured Party, shall at all times have a valid and effective right of action in respect of the Solidary Claim and the right to give a full acquittance for same. By its execution of the Loan Documents to which it is a party, each such Loan Party not a party hereto shall also be deemed to have accepted the stipulations hereinabove provided. The parties further agree and acknowledge that such Liens (hypothecs) under the Security Documents and the other Loan Documents shall be granted to the Canadian Agent, for its own benefit and for the benefit of the Secured Parties, as solidary creditor as hereinabove set forth.

(d) The relationship between each Agent and each of the Secured Parties is that of an independent contractor. The use of the terms Administrative Agent or Canadian Agent is for convenience only and is used to describe, as a form of convention, the independent contractual relationship between the Administrative Agent or the Canadian Agent, as applicable and each of the Secured Parties. Nothing contained in this Agreement nor the other Loan Documents shall be construed to create an agency, trust or other fiduciary relationship between the Administrative Agent or the Canadian Agent, as applicable, and any of the Secured Parties.

(e) As an independent contractor empowered by the Secured Parties to exercise certain rights and perform certain duties and responsibilities hereunder and under the other Loan Documents, the Applicable Agent is nevertheless a representative of the Secured Parties, as that term is defined in Article 1 of the Uniform Commercial Code, for purposes of actions for the benefit of the Lenders and the Agents with respect to all collateral security and guaranties contemplated by the Loan Documents. Such actions include the designation of the Applicable Agent as secured party, mortgagee or the like on all financing statements and other documents and instruments, whether recorded, filed, registered or otherwise, relating to the attachment, perfection, enforceability, priority or enforcement of any security interests, mortgages, hypothecs or deeds of trust in collateral security intended to secure the payment or performance of any of the Obligations, all for the benefit of the Secured Parties and the Agents.

12.1.2. Duties. No Agent shall have any duties except those expressly set forth in the Loan Documents, nor be required to initiate or conduct any Enforcement Action except to the extent directed to do so by the Required Lenders while an Event of Default exists. The conferral upon any Agent of any right shall not imply a duty on such Agent s part to exercise such right, unless instructed to do so by the Required Lenders in accordance with this Agreement.

12.1.3. Agent Professionals. Each Agent may perform its duties through agents and employees. Each Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. No Agent shall be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

12.1.4. Instructions of the Required Lenders. The rights and remedies conferred upon each Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. Any Agent may request instructions from the Required Lenders with respect to any act (including the failure to act) in connection with any Loan Documents, and may seek assurances to its satisfaction from the Lenders of their indemnification obligations under **Section 12.6** against all Claims that could be incurred by such Agent in connection with any act. Each Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and such Agent shall not incur liability to any Person by reason of so refraining. Instructions of the Required Lenders shall be binding upon all Lenders, and no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting in accordance with the instructions of the

Required Lenders. Notwithstanding the foregoing, instructions by and consent of all Lenders shall be required in the circumstances described in **Section 14.1.1**, and in no event shall, and in no event shall the Required Lenders, without the prior written consent of each Lender, direct any Agent to accelerate and demand payment of Loans held by one Lender without accelerating and demanding payment of all other Loans, nor to terminate any Commitments of one Lender without terminating such Commitment of all Lenders. In no event shall the Agent be required to take any action that, in its opinion, is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to personal liability.

12.2. Agreements Regarding Collateral and Field Examination Reports.

12.2.1. Lien Releases; Care of Collateral. The Lenders authorize each Agent to release any Lien with respect to any Collateral (a) upon Full Payment of the Obligations, (b) that is the subject of a disposition which the Borrower Agent certifies in writing to the Administrative Agent is permitted under this Agreement (including under **Section 10.2.13**) or a Lien which the Borrowers certify is a Permitted Lien entitled to priority over the Applicable Agent s Liens (and the Applicable Agent may rely conclusively on any such certificate without further inquiry), (c) that does not constitute a material part of the Collateral, or (d) with the written consent of all Lenders. No Agent shall have any obligation whatsoever to any Lenders to assure that any Collateral exists or is owned by a Loan Party, or is cared for, protected, insured or encumbered, nor to assure that the Applicable Agent s Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

12.2.2. Possession of Collateral. The Agents and the Lenders appoint each other Agent and the Lender as agent for the purpose of perfecting Liens (for the benefit of the Secured Parties) in any Collateral that, under the UCC, PPSA or other Applicable Law, can be perfected by possession. If any Lender obtains possession of any such Collateral, it shall notify the Agent thereof and, promptly upon the Agent s request, deliver such Collateral to Applicable Agent or otherwise deal with such Collateral in accordance with the Applicable Agent s instructions or as required by the Intercreditor Agreement.

12.2.3. Reports. The Administrative Agent shall promptly, upon receipt thereof, forward to each Lender copies of the results of any field audit or other examination or any appraisal prepared by or on behalf of any Agent with respect to any Loan Party or Collateral (Report). Each Lender agrees (a) that neither Bank of America nor any Agent makes any representation or warranty as to the accuracy or completeness of any Report, and shall not be liable for any information contained in or omitted from any Report; (b) that the Reports are not intended to be comprehensive audits or examinations, and that any Agent or any other Person performing any audit or examination will inspect only specific information regarding Obligations or the Collateral and will rely significantly upon the Loan Parties books and records as well as upon representations of the Loan Parties officers and employees; and (c) to keep all Reports confidential and strictly for such Lender s internal use, and not to distribute any Report (or the contents thereof) to any Person (except to such Lender s Participants, attorneys and accountants) or use any Report in any manner other than administration of the Loans and other Obligations. Each Lender agrees to indemnify and hold harmless each Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Report, as well as any Claims arising in connection with any third parties that obtain all or any part of a Report through such Lender, provided that no Lender shall have any obligation to indemnify and hold harmless such other Person preparing a Report for any claims arising that are determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such other Person preparing such Report.

12.3. **Reliance by the Agents**. Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy, electronic transmission or e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and upon the advice and statements of the Agent Professionals.

12.4. **Action Upon Default**. No Agent shall be deemed to have knowledge of any Default or Event of Default unless it has received written notice from a Lender or the Borrower specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default or Event of Default, it shall promptly notify the Agents and the other Lenders thereof in writing. Each Lender agrees that, except as otherwise provided in any Loan Documents or with the written consent of the Applicable Agent and the Required Lenders, it will not take any Enforcement Action, accelerate its Obligations, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral. Notwithstanding the foregoing, however, a Lender may take action to preserve or enforce its rights against a Loan Party where a deadline or limitation period is applicable that would, absent such action, bar enforcement of Obligations held by such Lender, including the filing of proofs of claim in an Insolvency Proceeding.

12.5. **Ratable Sharing**. If any Lender shall obtain any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its share of such Obligation, determined on a Pro Rata basis or in accordance with **Section 5.5**, as applicable, such Lender shall forthwith purchase from the Applicable Agent, the Issuing Banks and the other applicable Lenders such participations in the affected Obligation as are necessary to cause the purchasing Lender to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.5**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

12.6. **Indemnification of the Agent Indemnitees**.

12.6.1. **INDEMNIFICATION**. EACH LENDER SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY THE LOAN PARTIES (BUT WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS OF LOAN PARTIES UNDER ANY LOAN DOCUMENTS), ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY AGENT INDEMNITEE; PROVIDED THAT NO LENDER SHALL HAVE ANY OBLIGATION TO INDEMNIFY OR HOLD HARMLESS THE AGENT INDEMNITEES FOR ANY CLAIM THAT IS DETERMINED IN A FINAL, NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO RESULT FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY AGENT INDEMNITEE. If any Agent is sued by any receiver, trustee in bankruptcy, debtor-in-possession or other Person for any alleged preference from a Loan Party or fraudulent transfer, then any monies paid by such Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys fees) incurred in the defense of same, shall be promptly reimbursed to such Agent by the Lenders to the extent of each Lender s Pro Rata share.

12.6.2. **Proceedings**. Without limiting the generality of the foregoing, if at any time (whether prior to or after the Commitment Termination Date) any proceeding is brought against any Agent Indemnitees by a Loan Party, or any Person claiming through a Loan Party, to recover damages for any act taken or omitted by any Agent in connection with any Obligations, Collateral, Loan Documents or matters relating thereto, or otherwise to obtain any other relief of any kind on account of any transaction relating to any Loan Documents, each Lender agrees to indemnify and hold harmless the Agent Indemnitees with respect thereto and to pay to the Agent Indemnitees such Lender s Pro Rata share of any amount that any Agent Indemnitee is required to pay under any judgment

or other order entered in such proceeding or by reason of any settlement, including all interest, costs and expenses (including attorneys fees) incurred in defending same; provided that no Lender shall be liable for payment of any such amount to the extent that it is determined in a final, non-appealable judgment by a court of competent jurisdiction that such judgment, order or settlement resulted from any Agent Indemnitees gross negligence or willful misconduct. In the Applicable Agent s discretion, such Agent may reserve for any such proceeding, and may satisfy any judgment, order or settlement, from proceeds of Collateral prior to making any distributions of Collateral proceeds to the Lenders provided that it has not been determined in a final, non-appealable judgment by a court of competent jurisdiction that such judgment, order or settlement resulted from any Agent Indemnitees gross negligence or willful misconduct.

12.7. Limitation on Responsibilities of the Administrative Agent and the Canadian Agent. No Agent shall be liable to the Lenders for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by such Agent s gross negligence or willful misconduct. No Agent assumes any responsibility for any failure or delay in performance or any breach by any Loan Party or Lender of any obligations under the Loan Documents. No Agent makes to the Lenders any express or implied warranty, representation or guarantee with respect to any Obligations, Collateral, Loan Documents or Loan Party. No Agent Indemnitee shall be responsible to the Lenders for any recitals, statements, information, representations or warranties contained in any Loan Documents; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectibility, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectibility of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Loan Party or Account Debtor. No Agent Indemnitee shall have any obligation to any Lender to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any Loan Party of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

12.8. Successor Agents.

12.8.1. Resignation; Successor Agent. Subject to the appointment and acceptance of a successor Administrative Agent or Canadian Agent as provided below, any Agent may resign at any time by giving at least 30 days written notice thereof to the Lenders and the Borrowers. Upon receipt of such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent or Canadian Agent, as applicable, which shall be (a) a Lender or an Affiliate of a Lender; or (b) a commercial bank with an office in the United States or Canada, as applicable, that, unless a Default or Event of Default exists, is reasonably acceptable to the Borrower Agent. If no successor agent is appointed prior to the effective date of the resignation of such Agent, then such Agent may appoint a successor agent from among the Lenders. Upon acceptance by a successor Administrative Agent or Canadian Agent, as the case may be, of an appointment to serve as such Agent hereunder, such successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Administrative Agent or Canadian Agent, as applicable, without further act, and the retiring Administrative Agent or Canadian Agent, as applicable, shall be discharged from its duties and obligations hereunder but shall continue to have the benefits of the indemnification set forth in **Sections 12.6** and **14.2**. Notwithstanding any Agent s resignation, the provisions of this **Section 12** shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it in such capacity. Any successor by merger or acquisition of the stock or assets of Bank of America or Bank of America-Canada Branch shall continue to be the Administrative Agent and the Canadian Agent hereunder (respectively) without further act on the part of the parties hereto, unless such successor resigns as provided above.

12.8.2. Separate Agent. It is the intent of the parties that there shall be no violation of any Applicable Law denying or restricting the right of financial institutions to transact business in any jurisdiction. If any Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any Applicable Law, such Agent may appoint an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If any Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to such Agent under the Loan Documents shall also be vested in such separate agent. Every covenant and obligation necessary to the exercise thereof by such agent shall run to and be enforceable by it as well as such Agent. The Lenders shall execute and deliver such documents as each Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by the Applicable Agent until appointment of a new agent.

12.9. Due Diligence and Non-Reliance. Each Lender acknowledges and agrees that it has, independently and without reliance upon any Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Loan Party and its own decision to enter into this Agreement and to fund Loans and participate in US LC Obligations and/or Canadian LC Obligations hereunder. Each Lender has made such inquiries concerning the Loan Documents, the Collateral and each Loan Party as such Lender feels necessary. Each Lender further acknowledges and agrees that the other Lenders and the Agents have made no representations or warranties concerning any Loan Party, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Lender will, independently and without reliance upon the other Lenders or the Agents, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans and participating in US LC Obligations and/or Canadian LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, no Agent shall have any duty or responsibility to provide any Lender with any notices, reports or certificates furnished to any Agent by any Loan Party or any credit or other information concerning the affairs, financial condition, business or Properties of any Loan Party (or any of its Affiliates) which may come into possession of the Applicable Agent or any of such Agent s Affiliates.

12.10. Replacement of Certain Lenders. In the event that any Lender (a) fails to fund its Pro Rata share of any Loan, US LC Obligation or Canadian LC Obligation hereunder, and such failure is not cured within two Business Days, (b) defaults in performing any of its obligations under the Loan Documents, or (c) fails to give its consent to any amendment, waiver or action for which consent of all Lenders was required and the Required Lenders consented, then, in addition to any other rights and remedies that any Person may have, the Administrative Agent may, by notice to such Lender within 120 days after such event, require such Lender to assign all of its rights and obligations under the Loan Documents to Eligible Assignee(s) specified by the Administrative Agent, pursuant to appropriate Assignment and Assumption Agreement(s) and within 20 days after the Administrative Agent s notice. The Administrative Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment and Assumption Agreement if the Lender fails to execute same. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents, including all principal, interest and fees through the date of assignment (but excluding any prepayment charge).

12.11. Remittance of Payments and Collections.

12.11.1. Remittances Generally. All payments by any Lender to the Applicable Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by the Applicable Agent and request for payment is made by the Applicable Agent by 11:00 a.m. on a Business Day, payment shall be made by the Lender not later than 2:00 p.m. on such day, and if request is made after 11:00 a.m., then payment shall

be made by 11:00 a.m. on the next Business Day. Payment by the Applicable Agent to any Lender shall be made by wire transfer, in the type of funds received by the Applicable Agent. Any such payment shall be subject to the Applicable Agent s right of offset for any amounts due from such Lender under the Loan Documents.

12.11.2. **Failure to Pay**. If any Lender fails to pay any amount when due by it to the Applicable Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate determined by the Applicable Agent as customary in the banking industry for interbank compensation. In no event shall the Borrowers be entitled to receive credit for any interest paid by a Lender to the Applicable Agent.

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

12.12. **The Agents in their Individual Capacity**. As a Lender, each of Bank of America and Bank of America-Canada Branch shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms Lenders, Required Lenders, Required US Lenders, Required Canadian Lenders, Required Revolver Lender, and Required Tranche A-1 Lenders or any similar term shall include each of Bank of America and Bank of America-Canada Branch, respectively, in its capacity as a Lender. Each of Bank of America, Bank of America-Canada Branch and their Affiliates may accept deposits from, maintain deposits or credit balances for, invest in, lend money to, provide Bank Products to, act as trustee under indentures of, serve as financial or other advisor to, and generally engage in any kind of business with, the Loan Parties and their Affiliates, as if Bank of America and Bank of America-Canada Branch were any other bank, without any duty to account therefor (including any fees or other consideration received in connection therewith) to the other Lenders. In its individual capacity, each of Bank of America, Bank of America-Canada Branch and its Affiliates may receive information regarding the Loan Parties, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Lender agrees that each of Bank of America, Bank of America-Canada Branch and its Affiliates shall be under no obligation to provide such information to the Lenders, if acquired in such individual capacity and not as an Agent hereunder.

12.13. **Agent Titles**. Each Lender (if any), other than Bank of America and Bank of America-Canada Branch, that is designated (on the cover page of this Agreement or otherwise) by Bank of America as an Agent or Arranger of any type shall not have any right, power, responsibility or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event be deemed to have any fiduciary relationship with any other Lender.

12.14. **No Third Party Beneficiaries**. This **Section 12** is an agreement solely among Lenders and the Agents, and does not confer any rights or benefits upon the Loan Parties or any other Person. As between the Loan Parties and the Agents, any action that any Agent may take under any Loan Documents shall be conclusively presumed to have been authorized and directed by the Lenders as herein provided.

12.15. Loan Documents; Intercreditor Agreement. Each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto. Without limiting the generality of the foregoing, the Lenders hereby irrevocably authorize the Agents (or any of them) to enter into the Intercreditor Agreement and agree to be bound by the provisions thereof.

SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS AND PARTICIPATIONS

13.1. Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (a) to an Eligible Assignee in accordance with the provisions of **Section 13.2**, (b) by way of participation in accordance with the provisions of **Sections 13.5 and 13.6**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 13.7** (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Sections 13.5** and **13.6** and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Canadian Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

13.2. Assignments by Lenders. Subject to **Section 13.3**, any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this **Section 13.2** participations in US LC Obligations, Canadian LC Obligations and in Swingline Loans) at the time owing to it); provided that

(a) except in the case of an assignment of the entire remaining amount of the assigning Lender s Commitments and Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitments (which for this purpose includes Loans outstanding thereunder) or, if the Commitments are not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date set forth in the Assignment and Assumption Agreement with respect to such assignment is delivered to the Agents or, if Trade Date is specified in the Assignment and Assumption Agreement, as of the Trade Date, shall not be less than the Dollar Equivalent of $10,000,000 unless each of the Agents and, so long as no Event of Default has occurred and is continuing, the Borrower Agent otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender s rights and obligations under this Agreement with respect to the Loans or the Commitments assigned (it being understood that non-pro rata assignments of or among any of the Commitments, the Loans, the US LC Obligations or the Canadian LC Obligations are not permitted), except that this clause (b) shall not apply to rights in respect of Swingline Loans;

(c) any assignment of a Commitment must be approved by the Agents, the Issuing Banks and the Swingline Lender unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and

(d) the parties to each assignment shall execute and deliver to the Agents an Assignment and Assumption Agreement, together with a processing and recordation fee in the amount of $3,500, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Applicable Agent an administrative questionnaire in the Applicable Agent s customary form.

From and after the effective date specified in each Assignment and Assumption Agreement, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a US Lender, Canadian Lender and Tranche A-1 Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender s rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Sections 3.4, 3.6, 3.7, 3.9, 5.8, 5.9** and **14.2** with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the applicable Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Sections 13.5** and **13.6**.

13.3. Proportionate Assignments; Proportionate Holdings. Notwithstanding anything to the contrary contained herein, including without limitation, **Sections 2.4, 3.11** and **12.10**, at all times, each Lender shall (either directly or indirectly through an Affiliate) hold a portion (in proportionate amounts) of each of the US Revolver Commitments (or the US Revolver Loans if such Commitments have been terminated), the Canadian Revolver Commitments (or the Canadian Revolver Loans if such Commitments have been terminated) and Tranche A-1 Commitments (or the Tranche A-1 Loans if such Commitments have been terminated).

13.4. Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Administrative Agent s office a copy of each Assignment and Assumption Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Lenders Commitments of, and principal amounts of the Loans, US LC Obligations and Canadian LC Obligations owing to, each Lender pursuant to the terms hereof from time to time (the Register). The entries in the Register shall be conclusive, and the Borrowers, the Agents 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 each of the Borrowers and the Issuing Banks at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

13.5. Participations.

(a) Any Lender may at any time, without the consent of, or notice to, the Borrowers or any Agent, sell participations to any Person (other than a natural person or any Borrower or any of the Borrower s Affiliates or Subsidiaries) (each, a Participant) in all

or a portion of such Lender s rights and/or obligations under this Agreement (including all or a portion of a Lender s Commitment and/or the Loans (including such Lender s participations in US LC Obligations, Canadian LC Obligations and/or Swing Line Loans) owing to it); provided that (i) each such participation shall be in an amount of not less than the Dollar Equivalent of $10,000,000, (ii) such Lender s obligations under this Agreement shall remain unchanged, (iii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iv) the Borrowers, the Agents, the Lenders and the Issuing Banks shall continue to deal solely and directly with such Lender in connection with such Lender s rights and obligations under this Agreement.

(b) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification that would reduce the principal of or the interest rate on any Loans, extend the term or increase the amount of the Commitment of such Lender as it relates to such Participant, reduce the amount of any Unused Fees or Letter of Credit Fees to which such Participant is entitled or extend any regularly scheduled payment date for principal or interest or release Collateral which would cause an Overadvance Loan that affects such Participation. Subject to **Section 13.6**, the Loan Parties agree that each Participant shall be entitled to the benefits of **Sections 3.6, 3.9, 5.8** and **5.9** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 13.2**. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 11.4** as though it were a Lender, provided such Participant agrees to be subject to **Section 5.5** as though it were a Lender.

13.6. Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under **Section 3.6, 5.8** or **5.9** 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 Borrowers 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 5.9** unless the Borrowers are notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with **Section 5.9** as though it were a Lender.

13.7. Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

13.8. Electronic Execution of Assignments. The words execution, signed, signature, and words of like import in any Assignment and Acceptance Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

13.9. Tax Treatment. If any interest in a Loan Document is transferred to a Transferee that is organized under the laws of any jurisdiction other than the United States or any state or district thereof, the transferor Lender shall cause such Transferee, concurrently with the effectiveness of such transfer, to comply with the provisions of **Section 5.9**.

13.10. Representation of the Lenders. Each Lender represents and warrants to each Borrower, each Agent and other Lenders that none of the consideration used by it to fund its Loans or to participate in any other transactions under this Agreement constitutes for any purpose of ERISA or Section 4975 of the Code assets of any plan as defined in Section 3(3) of ERISA or Section 4975 of the Code and the interests of such Lender in and under the Loan Documents shall not constitute plan assets under ERISA.

13.11. Assignment by the Loan Parties. The Loan Parties shall not assign or transfer any of their rights or obligations under any of the Loan Documents without the prior written consent of each of the Agents and each of the Lenders.

SECTION 14. MISCELLANEOUS

14.1. Consents, Amendments and Waivers.

14.1.1. Amendment. No modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of the Administrative Agent, with the consent of the Required Lenders, and each Loan Party party to such Loan Document; provided, however, that

(a) without the prior written consent of (i) the Administrative Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties or discretion of the Administrative Agent or (ii) the Canadian Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties or discretion of the Canadian Agent;

(b) without the prior written consent of the Issuing Banks, no modification shall be effective with respect to any US LC Obligations, Canadian LC Obligations or **Section 2.3**;

(c) without the prior written consent of each affected Lender, no modification shall be effective that would (i) increase the Commitment of such Lender; (ii) reduce the amount of, or waive, postpone or delay payment of, any principal, interest, fees or other amounts payable to such Lender (it being understood that only the consent of the Required Lenders shall be necessary to amend the definition of Default Rate or waive any obligation of the Borrowers to pay interest at the Default Rate); (iii) amend the definitions of US Borrowing Capacity, Canadian Borrowing Capacity, Tranche A-1 Borrowing Capacity or Term Loan Borrowing Capacity (and the defined terms used, directly or indirectly, in such definitions) or Pro Rata; or (iv) increase any advance rate *(it being understood, however*, that clauses (iii) and (iv) above shall not (x) limit the adjustment by the Agents of the Availability Reserve in the Agents administration of the Loans as otherwise permitted by this Agreement or (y) prevent the Agents, in their administration of the Loans, from restoring any component of the US Borrowing Capacity, Canadian Borrowing Capacity, Tranche A-1 Borrowing Capacity or Term Loan Borrowing Capacity which had been lowered by the Agents back to the value of such component, as stated in this Agreement or to an intermediate value);

(d) change (i) any provision of this **Section 14.1** or the definition of Required Lenders without the written consent of each Lender, (ii) the definition of Required US Lenders without the written consent of each US Lender; (iii) the definition of Required Canadian Lenders without the written consent of each Canadian Lender; (iv) the definition of Required Revolver Lenders without the written consent of each Revolver Lender; or (v) the definition of Required Tranche A-1 Lenders without the written consent of each Tranche A-1 Lender; and

(e) without the prior written consent of all Lenders (except a Defaulting Lender), no modification shall be effective that would (i) extend the Termination Date; (ii) alter **Section 5.5, Section 7** or **Section 14.1.1**; (iii) release all or substantially all of the Collateral (excluding, if any Loan Party or any Subsidiary of any Loan Party becomes a debtor under the federal Bankruptcy Code, the release of cash collateral , as defined in Section 363(a) of the federal Bankruptcy Code pursuant to a cash collateral stipulation with the debtor approved by the Required Lenders); or (iv) release all or substantially all of the value of the Guaranties.

14.1.2. Limitations. The agreement of the Loan Parties shall not be necessary to the effectiveness of any modification of a Loan Document that deals solely with the rights and duties of the Lenders, the Agents and/or the Issuing Banks as among themselves. Only the consent of the parties to the Fee Letter or any agreement relating to a Bank Product shall be required for any modification of such agreement, and no Affiliate of a Lender that is party to a Bank Product agreement shall have any other right to consent to or participate in any manner in modification of any other Loan Document. The making of any Loans or the issuance of Letters of Credit during the existence of a Default or Event of Default shall not be deemed to constitute a waiver of such Default or Event of Default, nor to establish a course of dealing. Any waiver or consent granted by the Lenders hereunder shall be effective only if in writing, and then only in the specific instance and for the specific purpose for which it is given.

14.1.3. Payment for Consents. No Loan Party will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

14.2. Indemnity. EACH LOAN PARTY SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, PROCEEDINGS, COSTS AND EXPENSES OF ANY KIND (INCLUDING REMEDIAL RESPONSE COSTS, REASONABLE ATTORNEYS FEES AND EXTRAORDINARY EXPENSES) AT ANY TIME (INCLUDING AFTER FULL PAYMENT OF THE OBLIGATIONS, RESIGNATION OR REPLACEMENT OF ANY AGENT, OR REPLACEMENT OF ANY LENDER) INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE IN ANY WAY RELATING TO (A) ANY LOAN DOCUMENTS OR TRANSACTIONS RELATING THERETO, (B) ANY ACTION TAKEN OR OMITTED TO BE TAKEN BY ANY INDEMNITEE IN CONNECTION WITH ANY LOAN DOCUMENTS, (C) THE EXISTENCE OR PERFECTION OF ANY LIENS, OR REALIZATION UPON ANY COLLATERAL, (D) EXERCISE OF ANY RIGHTS OR REMEDIES UNDER ANY LOAN DOCUMENTS OR APPLICABLE LAW, (E) FAILURE BY ANY LOAN PARTY TO PERFORM OR OBSERVE ANY TERMS OF ANY LOAN DOCUMENT, IN EACH CASE INCLUDING ALL COSTS AND EXPENSES RELATING TO ANY INVESTIGATION, LITIGATION, ARBITRATION OR OTHER PROCEEDING (INCLUDING AN INSOLVENCY PROCEEDING OR APPELLATE PROCEEDINGS), WHETHER OR NOT THE APPLICABLE INDEMNITEE IS A PARTY THERETO, (F) ANY LOAN OR LETTER OF CREDIT OR THE USE OR PROPOSED 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), (G) ANY ACTUAL OR ALLEGED ENVIRONMENTAL RELEASE ON OR FROM ANY PROPERTY OWNED OR OPERATED BY ANY BORROWER OR ANY OF ITS SUBSIDIARIES, OR ANY

LIABILITY IN CONNECTION WITH ANY ACTUAL OR ALLEGED VIOLATION OF ANY ENVIRONMENTAL LAW RELATED IN ANY WAY TO ANY LOAN PARTY OR ANY OF ITS SUBSIDIARIES, OR (H) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY, WHETHER BROUGHT BY A THIRD PARTY OR BY A BORROWER OR ANY OTHER LOAN PARTY (HEREINAFTER, CLAIMS) THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE. In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a Claim that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee.

14.3. Notices and Communications.

14.3.1. Notice Address. Subject to **Section 4.1.4**, all notices, requests and other communications by or to a party hereto shall be in writing and shall be given to any Loan Party, at the Borrower Agent s mailing address identified on **Schedule 14.3.1**, and to any Agent or Lender at its address identified on **Schedule 14.3.1** (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment and Assumption Agreement), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. Each such notice, request or other communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the mail, with first-class postage pre-paid, addressed to the applicable address; or (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged. Notwithstanding the foregoing, no notice to any Agent pursuant to **Section 2.2, 2.3, 3.1.2** or **4.1.1** shall be effective until actually received by the individual to whose attention at such Agent such notice is required to be sent. Any written notice, request or other communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by the Borrower Agent shall be deemed received by all Borrowers and Loan Parties.

14.3.2. Electronic Communications; Voice Mail. Electronic mail and internet websites may be used only for routine communications, such as financial statements, Borrowing Base Certificates and other information required by **Section 10.1.2**, administrative matters, distribution of Loan Documents for execution, and matters permitted under **Section 4.1.4**. The Agents and the Lenders make no assurances as to the privacy and security of electronic communications. Electronic and voice mail may not be used as effective notice under the Loan Documents.

14.3.3. Non-Conforming Communications. The Agents and the Lenders may rely upon any notices purportedly given by or on behalf of any Borrower even if such notices were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Borrower shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any telephonic communication purportedly given by or on behalf of a Borrower.

14.4. Performance of the Borrowers Obligations. Any Agent may, in its discretion at any time and from time to time after the occurrence, and during the continuance, of an Event of Default, at the Borrowers expense, pay any amount or do any act required of a Borrower under any Loan Documents or otherwise lawfully requested by such Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of such

Agent s Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All payments, costs and expenses (including Extraordinary Expenses) of each Agent under this **Section 14.4** shall be reimbursed to such Agent by the Borrowers, **on demand**, with interest from the date incurred to the date of payment thereof at the Default Rate applicable to Base Rate Tranche A-1 Loans. Any payment made or action taken by any Agent under this **Section 14.4** shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

14.5. Credit Inquiries. Each Loan Party hereby authorizes the Agents and the Lenders (but they shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Loan Party or any Subsidiary.

14.6. Severability. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

14.7. Cumulative Effect; Conflict of Terms. The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise specifically provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

14.8. Counterparts; Facsimile and Electronic Signatures. Any Loan Document may be executed in counterparts, each of which taken together shall constitute one instrument. Loan Documents may be executed and delivered by facsimile or electronic communication, and they shall have the same force and effect as manually signed originals. Any Agent may require confirmation by a manually-signed original, but failure to request or deliver same shall not limit the effectiveness of any such facsimile signature or signature received by electronic communications.

14.9. Entire Agreement. Time is of the essence of the Loan Documents. The Loan Documents embody the entire understanding of the parties with respect to the subject matter thereof and supersede all prior understandings regarding the same subject matter.

14.10. Obligations of the Lenders. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled, to the extent not otherwise restricted hereunder, to protect and enforce its rights arising out of the Loan Documents. It shall not be necessary for any Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of any Agent or Lenders pursuant to the Loan Documents shall be deemed to constitute the Agents and the Lenders to be a partnership, association, joint venture or any other kind of entity, nor to constitute control of any Loan Party.

14.11. Confidentiality. The Lenders agree to maintain the confidentiality of any information that the Loan Parties deliver to the Agents and the Lenders, except that any Agent and any Lender may disclose such information (a) to their respective officers, directors, employees, Affiliates and agents, including legal counsel, auditors and other professional advisors; (b) to any party to the Loan Documents from time to time (it being understood that the Persons to whom such disclosure is made will be informed of the

confidential nature of such information and instructed to keep such information confidential); (c) pursuant to the order of any court or administrative agency; (d) upon the request of any Governmental Authority exercising regulatory authority over such Agent or such Lender; (e) which ceases to be confidential, other than by an act or omission of any Agent or any Lender, or which becomes available to any Agent or any Lender on a nonconfidential basis; (f) to the extent reasonably required in connection with any litigation relating to any Loan Documents or transactions contemplated thereby, or otherwise as required by Applicable Law; (g) to the extent reasonably required for the exercise of any rights or remedies under the Loan Documents; (h) to any actual or proposed party to a Bank Product or to any Transferee, as long as such Person agrees to be bound by the provisions of this **Section 14.11**; (i) to the National Association of Insurance Commissioners or any similar organization, or to any nationally recognized rating agency that requires access to information about a Lender s portfolio in connection with ratings issued with respect to such Lender; (j) to any investor or potential investor in an Approved Fund that is a Lender or Transferee, but solely for use by such investor to evaluate an investment in such Approved Fund, or to any manager, servicer or other Person in connection with its administration of any such Approved Fund (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential); or (k) with the consent of the Borrower Agent. Notwithstanding the foregoing, the Agents and the Lenders may issue and disseminate to the public general information describing this credit facility, including the names and addresses of the Loan Parties and a general description of the Loan Parties businesses, and may (so long as the Borrower Agent has previously reviewed and approved the form of such advertisement or promotional materials) use the Loan Parties names in advertising and other promotional materials.

14.12. GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS OTHERWISE SPECIFIED, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, NEW YORK GENERAL OBLIGATIONS LAW SECTIONS 5-1401 AND 5-1402 (BUT GIVING EFFECT TO FEDERAL LAWS RELATING TO NATIONAL BANKS).

14.13. Consent to Forum.

EACH LOAN PARTY PARTY HERETO HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY FEDERAL COURT SITTING IN OR WITH JURISDICTION OVER THE SOUTHERN DISTRICT OF NEW YORK AND OF ANY STATE COURT OF THE STATE OF NEW YORK SITTING IN THE COUNTY OF MANHATTAN, IN ANY PROCEEDING OR DISPUTE RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY SUCH PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH LOAN PARTY PARTY HERETO IRREVOCABLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING SUCH COURT S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. Nothing herein shall limit the right of any Agent or any Lender to bring proceedings against any Loan Party in any other court. Nothing in this Agreement shall be deemed to preclude enforcement by any Agent of any judgment or order obtained in any forum or jurisdiction.

14.14. Waivers by the Loan Parties. To the fullest extent permitted by Applicable Law, each Loan Party party hereto waives (a) the right to trial by jury (which each Agent and each Lender hereby also waives) in any proceeding, claim or counterclaim of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by any Agent on which a Borrower or such Loan Party

may in any way be liable, and hereby ratifies anything such Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing any Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisement and exemption laws; (f) any claim against any Agent or any Lender, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Loan Party hereto acknowledges that the foregoing waivers are a material inducement to the Agents and the Lenders entering into this Agreement and that the Agents and the Lenders are relying upon the foregoing in their dealings with the Borrowers and the other the Loan Parties. Each Loan Party has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

14.15. Patriot Act Notice. The Agents and the Lenders hereby notify the Borrowers and the other Loan Parties that pursuant to the requirements of the Patriot Act, the Agents and the Lenders are required to obtain, verify and record information that identifies each Loan Party, including its legal name, address, tax ID number and other information that will allow the Agents and the Lenders to identify it in accordance with the Patriot Act. The Agents and the Lenders will also require information regarding each personal guarantor, if any, and may require information regarding the Loan Parties management and owners, such as legal name, address, social security number and date of birth.

14.16. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any credit extension, and shall continue in full force and effect until the Full Payment of the Obligations.

14.17. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Loan Parties acknowledges and agrees, and acknowledges its Affiliates understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Agents and the Arranger are arm s-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Agents and the Arranger, on the other hand, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agents and the Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) neither the Agents nor the Arranger has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents and the Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Agents nor the Arranger has any obligation to disclose any of such interests to the Loan Parties or any of their respective Affiliates. To the fullest extent permitted by law, except in connection with the gross negligence and willful misconduct of the Agents or their Affiliates, each of the Loan Parties hereby waives and releases any claims

that it may have against the Agents and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby. Each Loan Party acknowledges and agrees that in connection with all aspects of any transaction contemplated by the Loan Documents, Loan Parties, Agent, Issuing Banks and Lenders have an arms-length business relationship that creates no fiduciary duty on the part of any Agent, Issuing Banks or Lender, and each Loan Party, Agent, and Issuing Bank expressly disclaims any fiduciary relationship.

14.18. Resignation as Issuing Bank or Provider of Swingline Loans after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America resigns as the Administrative Agent or assigns all of its US Revolver Commitment and US Revolver Loans, Bank of America may, (i) upon 30 days notice to the US Borrower and the US Lenders, resign as Issuing Bank of Letters of Credit issued for the account or benefit of the US Borrower and/or (ii) upon 30 days notice to the US Borrower, resign as provider of Swingline Loans to the US Borrower. Notwithstanding anything to the contrary contained herein, if at any time Bank of America-Canada Branch or any Affiliate resigns as the Canadian Agent or assigns all of its Canadian Revolver Commitment and Canadian Revolver Loans, Bank of America-Canada Branch or such Affiliate may, (i) upon 30 days notice to the Canadian Borrower and the Canadian Lenders, resign as Issuing Bank of Letters of Credit issued for the account or benefit of the Canadian Borrower and/or (ii) upon 30 days notice to the Canadian Borrower, resign as provider of Swingline Loans to the Canadian Borrower. In the event of any such resignation as Issuing Bank or provider of Swingline Loans, the Borrowers shall be entitled to appoint from among the Lenders a successor Issuing Bank or provider of Swingline Loans; provided, however, that no failure by the Borrowers to appoint any such successor shall affect the resignation of Bank of America or Bank of America-Canada Branch (or any Affiliate) as Issuing Bank or provider of Swingline Loans, as the case may be. If Bank of America or Bank of America-Canada Branch (or any Affiliate) resigns as Issuing Bank, it shall retain all the rights, powers, privileges and duties of Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Bank and all US LC Obligations or Canadian LC Obligations, as the case may be, with respect thereto (including the right to require the Lenders to make Base Rate Revolver Loans or Canadian Prime Rate Loans, as applicable, or fund risk participations in unreimbursed drawings of Letters of Credit). If Bank of America or Bank of America-Canada Branch resigns as provider of Swingline Loans, it shall retain all the rights of provider of Swingline Loans provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Revolver Loans or Canadian Prime Rate Loans or fund risk participations in outstanding Swingline Loans. Upon the appointment of a successor Issuing Bank and/or provider of Swingline Loans, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank or provider of Swingline Loans, as the case may be, and (b) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America or Bank of America-Canada Branch (or any Affiliate) with respect to such Letters of Credit.

14.19. Language. The parties have requested that this Agreement and the other documents contemplated hereby or relating hereto be drawn up in the English language. *Les parties ont requis que cette convention ainsi que tous les documents qui y sont envisagés ou qui s y rapportent soient rédigés en langue anglaise.*

14.20. Existing Credit Agreement. Each of the Loan Parties hereby ratifies and confirms all of its Obligations to the Administrative Agent, the Canadian Agent and the Lenders under the Existing Credit Agreement, as amended hereby, and the other Loan Documents (as defined in the Existing Credit Agreement), including, without limitation, the Loans, and each of the Loan Parties hereby affirms its absolute and unconditional promise to pay to the Lenders, the Administrative Agent and the Canadian Agent, as

applicable, the Loans, reimbursement obligations and all other amounts due or to become due and payable to the Lenders, the Administrative Agent and the Canadian Agent, as applicable, under the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement), as amended hereby and it is the intent of the parties hereto that nothing contained herein shall constitute a novation or accord and satisfaction. Each of the Loan Parties hereby acknowledges and confirms that the Liens, hypothecs, pledges and security interests granted pursuant to the Loan Documents (as defined in the Existing Credit Agreement), as amended hereby, are and continue to be valid, perfected and enforceable first priority liens, hypothecs, pledges and security interests (subject only to Permitted Liens) that secure all of the Obligations on and after the date hereof.

14.21. **Transitional Arrangements**. Upon the effectiveness of this Agreement, this Agreement shall supersede the Existing Credit Agreement in its entirety, except as otherwise provided in this **Section 14.21**. This Agreement constitutes an amendment and restatement of the Existing Credit Agreement effective from and after the Closing Date. The execution and delivery of this Agreement shall not constitute a novation of any indebtedness or other obligations owing to the Lenders, the Applicable L/C Issuers (as defined in the Existing Credit Agreement) or the Agents under the Existing Credit Agreement or evidence repayment of any such indebtedness or other obligations. It is the intent of the parties hereto that this Agreement amend and restate in its entirety the Existing Credit Agreement and re-evidence the obligations of the Loan Parties outstanding thereunder, secured by the Security Documents and guaranteed by the Guaranties. As of the Closing Date, the rights and obligations of the parties under the Existing Credit Agreement and the Notes (as defined in the Existing Credit Agreement) shall be subsumed within and be governed by this Agreement and the Notes. Each of the Loans (as defined in the Existing Credit Agreement) advanced by the Existing Lenders and outstanding under the Existing Credit Agreement immediately prior to the effectiveness of this Agreement shall continue to be Loans hereunder, provided that all interest, fees and expenses owing or accruing under or in respect of the Existing Credit Agreement through the Closing Date shall be calculated as of the Closing Date (pro rated in the case of any fractional periods), and shall be paid on the Closing Date. As of the Closing Date, the Existing Letters of Credit shall be deemed to be Letters of Credit issued pursuant and subject to the conditions of **Section 2.3** hereof and the Borrowers hereby affirm their respective obligations thereunder.

[Remainder of page intentionally left blank]

[Signature Pages follow]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as a sealed instrument as of the date first set forth above.

US BORROWER:

MAYOR S JEWELERS, INC.

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Senior Vice President, Chief Financial Officer

By: /s/ Marco Pasteris
Name: Marco Pasteris
Title: Group VP, Finance and Treasurer

CANADIAN BORROWER:

BIRKS & MAYORS INC.

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Senior Vice President, Chief Financial Officer

By: /s/ Marco Pasteris
Name: Marco Pasteris
Title: Group VP, Finance and Treasurer

GUARANTORS:

HENRY BIRKS & SONS U.S., INC.
MAYOR S JEWELERS OF FLORIDA, INC.
JBM RETAIL COMPANY, INC.
JBM VENTURE CO., INC.
MAYOR S JEWELERS INTELLECTUAL PROPERTY HOLDING COMPANY

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Senior Vice President, Chief Financial Officer

By: /s/ Marco Pasteris
Name: Marco Pasteris
Title: Group VP, Finance and Treasurer

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N.A.

By: /s/ Mark D. Twomey
Name: Mark D. Twomey
Title: Vice President

CANADIAN AGENT:

BANK OF AMERICA, N.A. (acting through its Canada branch)

By: /s/ Medina Sales De Andrade
Name: Medina Sales De Andrade
Title: Vice President

US LENDERS:

BANK OF AMERICA, N.A.

By: /s/ Mark D. Twomey
Name: Mark D. Twomey
Title: Vice President

US LENDERS:

WELLS FARGO RETAIL FINANCE, LLC

By: /s/ Connie Liu
Name: Connie Liu
Title: Assistant Vice President

US LENDERS:

BANK OF MONTREAL CHICAGO BRANCH

By: /s/ Larry Allan Swiniarski
Name: Larry Allan Swiniarski
Title: Vice President Cross Border

CANADIAN LENDERS:

BANK OF AMERICA, N.A. (acting through its Canada branch)

By: /s/ Medina Sales De Andrade
Name: Medina Sales De Andrade
Title: Vice President

CANADIAN LENDERS:

WELLS FARGO FOOTHILL CANADA ULC

By: /s/ Kathy Kilbourne
Name: Kathy Kilbourne
Title: Executive Vice President, Chief Financial Officer and Secretary

CANADIAN LENDERS:

BANK OF MONTREAL

By: /s/ Gary Karges
Name: Gary Karges
Title: Director

Corporate Finance

BMO Bank of Montreal

By: /s/ Gary B. Still
Name: Gary B. Still
Title: Senior Manager

Corporate Finance

BMO Bank of Montreal

TRANCHE A-1 LENDERS:

BANK OF AMERICA, N.A.

By: /s/ Mark D. Twomey
Name: Mark D. Twomey
Title: Vice President

TRANCHE A-1 LENDERS:

WELLS FARGO RETAIL FINANCE, LLC

By: /s/ Connie Liu
Name: Connie Liu
Title: Assistant Vice President

TRANCHE A-1 LENDERS:

BANK OF MONTREAL CHICAGO BRANCH

By: /s/ Larry Allan Swiniarski
Name: Larry Allan Swiniarski
Title: Vice President

Bank of Montreal

Chicago Branch

Exhibit 10.2

EXECUTION VERSION

MAYOR S JEWELERS, INC.,

as the US Borrower

BIRKS & MAYORS INC.,

as the Canadian Borrower

Collectively, the Borrowers

AND THEIR SUBSIDIARIES PARTY HERETO,

as Guarantors

TERM LOAN AND SECURITY AGREEMENT

Dated as of December 17, 2008

CERTAIN FINANCIAL INSTITUTIONS,

as Lenders,

GB MERCHANT PARTNERS, LLC,

as Administrative Agent

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Exhibit B	Form of Assignment and Assumption Agreement
Exhibit C	Form of Information Certificate
Exhibit D	Form of Compliance Certificate
Exhibit E	Form of Quebec Subordination Agreement

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TERM LOAN AND SECURITY AGREEMENT

THIS TERM LOAN AND SECURITY AGREEMENT (THIS "AGREEMENT") IS ENTERED INTO AS OF DECEMBER 17, 2008, AMONG **MAYOR'S JEWELERS INC.,** A DELAWARE CORPORATION (THE "US BORROWER"), **BIRKS & MAYORS INC.**, A CANADIAN CORPORATION (THE "CANADIAN BORROWER" AND, TOGETHER WITH THE US BORROWER, COLLECTIVELY, THE "BORROWERS" AND EACH INDIVIDUALLY, A "BORROWER"), EACH SUBSIDIARY OF THE BORROWERS FROM TIME TO TIME PARTY HERETO AS A GUARANTOR, EACH LENDER FROM TIME TO TIME PARTY HERETO (COLLECTIVELY, THE "LENDERS" AND EACH INDIVIDUALLY, A "LENDER"), **GB MERCHANT PARTNERS, LLC**, AS ADMINISTRATIVE AGENT (IN ITS INDIVIDUAL CAPACITY, "GB").

R E C I T A L S:

WHEREAS, the Borrowers have requested that the Lenders make available to the Borrowers a secured term loan facility in a maximum amount not to exceed $13,000,000, the proceeds of which term loan facility shall be used by the Borrowers for purposes permitted under, and otherwise in accordance with and subject to the terms of, this Agreement; and

WHEREAS, the Lenders are willing to make the term loan facility available to the Borrowers, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

1.1. Definitions. As used herein, the following terms have the meanings set forth below:

Account - as defined in the UCC or the PPSA, as applicable, including all rights to payment for goods sold or leased, or for services rendered.

Account Debtor - as defined in the UCC, and including a Person who is obligated under an Account, Chattel Paper or General Intangible.

Acquisition - the acquisition of all or substantially all of the assets of Brinkhaus The Jewellery Source Ltd. and certain assets of Brinkhaus Jewels Limited pursuant to the terms of the Acquisition Agreement.

Acquisition Agreement - the Asset Purchase Agreement, dated on or about November 1, 2007, among Brinkhaus, as sellers, and the Canadian Borrower, as purchaser, as amended by that certain First Amendment dated as of January 28, 2008.

Acquisition Notes - each of the promissory notes executed and delivered in connection with the Acquisition pursuant to the terms of the Acquisition Agreement, made by the Canadian Borrower to the sellers identified in the Acquisition Agreement in an aggregate principal amount not to exceed Cdn. $9,000,000 at any time.

Adjusted LIBOR - for any applicable Interest Period, with respect to any portion of the Term Loan, the rate per annum quoted as the one month Libor Rate by the Wall Street Journal two (2) Business Days prior to the first day of the applicable Interest Period.

Administrative Agent - GB Merchant Partners, LLC, in its capacity as administrative agent for the Lenders and as collateral agent for the Secured Parties regarding all matters concerning Collateral of the Loan Parties, or any successor Administrative Agent.

Affiliate - with respect to any Person, another Person (a) who directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such first Person; (b) who beneficially owns 10% or more of the voting securities or any class of Capital Stock of such first Person; (c) at least 10% of whose voting securities or any class of Capital Stock is beneficially owned, directly or indirectly, by such first Person; or (d) who is an officer, director, partner or managing member of such first Person. Control means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a Person, whether through ownership of Capital Stock, by contract or otherwise.

Agent Monitoring Fee - as defined in **Section 3.2.3**.

Agent Indemnitees - the Administrative Agent and its officers, directors, employees, Affiliates, agents, advisors and attorneys.

Agent Professionals - attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by the Administrative Agent.

Aggregate Borrowing Capacity - as defined in the Revolving Credit Agreement.

Aggregate Excess Availability - as defined in the Revolving Credit Agreement.

Anti-Terrorism Laws - any laws relating to terrorism or money laundering, including the Patriot Act.

Applicable Law - all laws, rules, regulations and governmental guidelines and orders applicable to the Person, conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

Applicable Pension Legislation - at any time, any pension or retirement benefits legislation (be it national, federal, provincial, territorial, foreign or otherwise) then applicable to the Borrowers or any of their Subsidiaries.

Appraised A/R Liquidation Value - as defined in the Revolving Credit Agreement.

Appraised Inventory Liquidation Value - as defined in the Revolving Credit Agreement.

Approved Fund - any Person (other than a natural person) that is engaged in making, holding or investing in extensions of credit in its ordinary course of business and is administered or managed by a Lender, an entity that administers or manages a Lender, or an Affiliate of either.

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

Assignment and Assumption Agreement - an assignment and assumption agreement between a Lender and Eligible Assignee, substantially in the form of **Exhibit B** hereto.

Availability Block - as defined in the Revolving Credit Agreement.

Availability Reserves - as defined in the Revolving Credit Agreement.

Bank of America - Bank of America, N.A., a national banking association.

Bankruptcy Code - Title 11 of the United States Code.

Birks - Birks & Mayors Inc., a Canadian corporation.

Birks US - Henry Birks & Sons U.S., Inc., a Delaware corporation.

BME IPCO - BME IPCO, Inc., a Delaware corporation, constituted as a joint venture in which the Canadian Borrower owns 50% of the issued and outstanding Capital Stock of BME IPCO and Esty Grossman, an individual, owns the remaining 50% of the issued and outstanding Capital Stock of BME IPCO.

BME IPCO Distribution Agreement - that certain Jewellery Design and Distribution Agreement entered into in Montreal, Quebec, Canada on August 31, 2006, between Esty Grossman, an individual, the Canadian Borrower and BME IPCO, as in effect on November 9, 2006, a copy of which is on file with the Administrative Agent.

Board of Governors - the Board of Governors of the Federal Reserve System.

Borrower and Borrowers - as defined in the preamble hereto.

Borrower Agent - as defined in **Section 4.4**.

Borrowing Base Certificate - as defined in the Revolving Credit Agreement.

Brinkhaus - collectively, Brinkhaus The Jewellery Source Ltd. and Brinkhaus Jewels Limited.

Brinkhaus Debt - all Debt owing to Brinkhaus under the Brinkhaus Debt Documents.

Brinkhaus Debt Documents - the Acquisition Agreement, the Acquisition Notes, and all other documents, instruments and agreements executed in connection therewith.

Business Day - any day excluding (a) Saturday, Sunday and any other day on which banks are permitted to be closed under the laws of the Commonwealth of Massachusetts, (b) any day on which banks do not conduct dealings in Dollar deposits on the London interbank market, and (c) any other day on which banks are permitted or required to be closed in Toronto, Ontario, Canada or in Montréal, Québec, Canada.

Canadian Borrower - as defined in the preamble hereto.

Canadian Concentration Account - a special concentration account established by the Canadian Borrower with the Canadian Revolving Agent, subject to the control of the Control Agent.

Canadian Debtor Relief Laws - means the Bankruptcy and Insolvency Act (Canada), the Companies Creditors Arrangement Act (Canada), the Winding-up Act (Canada) and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, dissolution or similar debtor relief laws of Canada.

Canadian Dollars or Cdn. $ - the lawful currency of Canada.

Canadian Guarantors - all Subsidiaries of the Borrowers that have executed a Guaranty and are organized under the laws of Canada or any province or territory thereof.

Canadian Loan Parties - collectively, the Canadian Borrower and the Canadian Guarantors.

Canadian Plan - any pension or other employee benefit plan and which is: (a) a plan maintained by any Canadian Loan Party or any Subsidiary of a Canadian Loan Party; (b) a plan to which any Canadian Loan Party or any Subsidiary of a Canadian Loan Party contributes or is required to contribute; (c) a plan to which any Canadian Loan Party or any Subsidiary of a Canadian Loan Party was required to make contributions at any time during the five (5) calendar years preceding the date of this Agreement; or (d) any other plan with respect to which any Canadian Loan Party or any Subsidiary or Affiliate of a Canadian Loan Party has incurred or may incur liability, including contingent liability either to such plan or to any Person, administration or Governmental Authority, including the FSCO.

Canadian Revolving Agent - the Canadian Agent , as defined in the Revolving Credit Agreement.

Canadian Security Documents - the General Security Agreement and the Quebec Security Documents, together with all security agreements, deeds of hypothec, pledge agreements or other collateral security agreements, instruments or documents (including Lien Waivers and Lien Priority Agreements) entered into or to be entered into by any Loan Party pursuant to which such Loan Party grants or perfects a security interest in its assets to the Administrative Agent, including, without limitation PPSA and UCC financing statements and certified statements issued by the Québec Register of Personal and Movable Real Rights, required to be executed or delivered pursuant to any Canadian Security Document.

Capital Adequacy Regulation - any law, rule, regulation, guideline, request or directive of any central bank or other Governmental Authority, whether or not having the force of law, regarding capital adequacy of a bank or any Person controlling a bank.

Capital Assets - fixed assets, both tangible (such as land, buildings, fixtures, machinery and equipment) and intangible (such as patents, copyrights, trademarks, franchises and goodwill); provided that Capital Assets shall not include any item customarily charged directly to expense or depreciated over a useful life of twelve (12) months or less in accordance with GAAP.

Capital Expenditures - amounts paid or Debt incurred by the Borrowers or any of their Subsidiaries in connection with (i) the purchase or lease by the Borrowers or any of their Subsidiaries of Capital Assets that would be required to be capitalized

and shown on the balance sheet of such Person in accordance with GAAP or (ii) the lease of any assets by the Borrowers or any of their Subsidiaries as lessee under any synthetic lease to the extent that such assets would have been Capital Assets had the synthetic lease been treated for accounting purposes as a Capital Lease

Capital Lease - any lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

Capital Stock - (a) in the case of a corporation, corporate stock; (b) in the case of an association or other business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

Cash Collateral - cash, and any interest or other income earned thereon, that is delivered to the Administrative Agent to Cash Collateralize any Obligations.

Cash Collateral Account - a demand deposit, money market or other account established by the Administrative Agent at such financial institution as the Administrative Agent may select in its discretion, which account shall be subject to the Administrative Agent s perfected Liens for the benefit of the Secured Parties.

Cash Collateralize - the delivery of cash to the Administrative Agent, as security for the payment of Obligations, in an amount equal to, with respect to any inchoate, contingent or other Obligations, the Administrative Agent s good faith estimate of the amount due or to become due, including all fees and other amounts relating to such Obligations. Cash Collateralization has a correlative meaning.

Cash Equivalents - (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the United States government or issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within 12 months of the date of acquisition; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within 12 months after such date and having, at the time of acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody s; (c) certificates of deposit, time deposits and bankers acceptances maturing within 12 months of the date of acquisition, and overnight bank deposits, in each case which are issued by a commercial bank organized under (i) the laws of the United States or any state or district thereof or (ii) the laws of Canada or any province or territory thereof, in each case, rated A-1 (or better) by S&P or P-1 (or better) by Moody s at the time of acquisition; (d) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) and (c) entered into with any bank meeting the qualifications specified in clause (c); (e) commercial paper rated A-1 (or better) by S&P or P-1 (or better) by Moody s, and maturing within twelve months of the date of acquisition; and (f) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above, has net assets of at least $500,000,000 and has the highest rating obtainable from either Moody s or S&P.

CERCLA - the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.).

Civil Code of Québec - the Civil Code of Québec as in effect from time to time.

Change of Control - at any time, the occurrence of one or more of the following events: (i) Birks shall cease to own directly or indirectly at least fifty-one percent (51%) of the issued and outstanding Voting Stock of Mayor s, (ii) Montrovest B.V. shall cease to own directly or indirectly at least fifty-one percent (51%) of the votes attaching to the Voting Stock of Birks or (iii) Mayors shall cease to own directly or indirectly all of the economic and voting rights associated with all of the outstanding Capital Stock of any of its Subsidiaries.

Chattel Paper - as defined in the UCC or the PPSA, as applicable.

Claims - as defined in **Section 14.2**.

Closing Date - as defined in **Section 6.1**.

Code - the Internal Revenue Code of 1986, as amended and in effect from time to time.

Collateral - all Property described in **Section 7.1**, all Property described in any Security Document as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

Collateral Value Report - as defined in **Section 10.1.1(b)**.

Combined Loan Cap - the sum of the Commitments (as defined in the Revolving Credit Agreement) plus the Total Outstandings.

Combined Total Outstandings - the sum of (i) the Total Revolver Outstandings (as defined in the Revolving Credit Agreement) plus (ii) the outstanding Tranche A-1 Loans (as defined in the Revolving Credit Agreement) plus (iii) the Total Outstandings.

Commercial Tort Claim - as defined in the UCC.

Commitment Fee - as defined in **Section 3.2.2**.

Commitments - as to each Lender, the amount set forth opposite such Lender s name on **Schedule 1.1(a)**, representing such Lender s obligation, upon and subject to the terms and conditions of this Agreement (including the applicable provisions of **Section 13**), to make its share of the Term Loan.

Compliance Certificate - a certificate, substantially in the form of **Exhibit D** hereto or such other form approved by the Administrative Agent, by which the Borrowers certify, among other things, the absence of Defaults or Events of Default or, to the extent either exist, describing the nature of such Default or Event of Default and the Borrowers plan to address such Default or Event of Default.

Concentration Accounts - collectively, the US Concentration Account and the Canadian Concentration Account.

Control Agent - as defined in the Intercreditor Agreement.

Consolidated or consolidated - with reference to any term defined herein, shall mean that term as applied to the accounts of the Borrowers and their Subsidiaries, consolidated in accordance with GAAP.

Consolidated EBITDA - with respect to any fiscal period, an amount equal to the sum of (a) Consolidated Net Income of the Borrowers and their Subsidiaries for such fiscal period, plus (b) in each case to the extent deducted in the calculation of such Persons Consolidated Net Income and without duplication, (i) depreciation and amortization for such period, plus (ii) income tax expense for such period, plus (iii) Consolidated Total Interest Expense paid or accrued during such period, plus (iv) other noncash charges for such period, all as determined in accordance with GAAP.

Consolidated Fixed Charges - for any period of the Borrowers and their Subsidiaries, determined on a Consolidated basis, without duplication, the sum of (a) Consolidated Total Interest Expense accrued during such period, plus (b) all payments of principal made or required to be made with respect to Debt (other than (i) Revolving Debt to the extent such payments do not permanently reduce the Commitments (as defined in the Revolving Credit Agreement), and (ii) Management Debt to the extent such payments constitute an expense in the calculation of Consolidated Net Income) during such period, plus (c) to the extent not constituting Debt, all Restricted Junior Payments made or required to be made in cash during such period.

Consolidated Net Income (or Deficit) - the consolidated net income (or deficit) of the Borrowers and their Subsidiaries, after deduction of all expenses, Taxes, and other proper charges, determined in accordance with GAAP, after eliminating therefrom all extraordinary nonrecurring items of income.

Consolidated Total Interest Expense - for any period, the aggregate amount of interest required to be paid or accrued by the Borrowers and their Subsidiaries during such period on all Debt of the Borrowers and their Subsidiaries outstanding during all or any part of such period, whether such interest was or is required to be reflected as an item of expense or capitalized, including payments consisting of interest in respect of any Capital Lease or any synthetic lease, and including commitment fees, agency fees, facility fees, balance deficiency fees and similar fees or expenses in connection with the borrowing of money, but excluding amortization of closing fees and expenses.

Contingent Obligation - any obligation of a Person arising from a guaranty, indemnity or other assurance of payment or performance of any Debt, lease, dividend or other obligation (primary obligations) of another obligor (primary obligor) in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty, endorsement, co-making or sale with recourse of an obligation of a primary obligor; (b) obligation to make take-or-pay or similar payments regardless of nonperformance by any other party to an agreement; and (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth or solvency of the primary obligor, (iv) to purchase Property or services for the purpose of assuring the ability of the primary obligor to perform a primary obligation, or (v) otherwise to assure or hold harmless the holder of any primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

Contractual Obligation - as applied to any Person, any provision of any security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

Cost - as defined in the Revolving Credit Agreement.

Credit Card Agreement - as defined in **Section 6.1(p)**.

CWA - the Clean Water Act (33 U.S.C. §§ 1251 et seq.).

Debt - as applied to any Person, without duplication, whether or not included as indebtedness or liabilities in accordance with GAAP (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments whether or not representing obligations for borrowed money; (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers acceptances, bank guaranties, surety bonds and similar instruments; (c) net obligations of such Person under any Hedging Agreement; (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business that are not more than 90 days past due); (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; (f) Capital Leases and synthetic lease obligations; (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any equity interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and (h) all Contingent Obligations of such Person in respect of any of the foregoing. For all purposes hereof, the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Debt is expressly made non-recourse to such Person.

Default - (a) an Event of Default or (b) any event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default.

Default Rate - for any Obligation (including, to the extent permitted by law, interest not paid when due), 3.50% plus the interest rate otherwise applicable thereto.

Defaulting Lender - as defined in **Section 4.2**.

Deposit Account - as defined in the UCC. The term Deposit Account shall include, for the avoidance of doubt, any Concentration Account and any Dominion Account.

Deposit Account Bank - any financial institution selected or approved by the Administrative Agent in its sole discretion exercised reasonably.

Deposit Account Control Agreement - a letter agreement, in form and substance reasonably acceptable to the Administrative Agent, executed by the relevant Loan Party, the Applicable Agent (as defined in the Revolving Credit Agreement), the Administrative Agent, the relevant Deposit Account Bank and any other party thereto (if any).

Document - as defined in the UCC.

Dollar Equivalent - of any amount means, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount and (b) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent using the published spot rate as quoted by Bank of America or its branches or Affiliates to customers generally as its noon spot rate at which such currency is offered on such day for Dollars.

Dollars or $ - lawful money of the United States.

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

Dominion Account - a Deposit Account subject to a Deposit Account Control Agreement.

Early Termination Fee - as defined in **Section 3.2.1**.

Eligible Assignee - a Person that is (a) a Lender, an Affiliate of a Lender or Approved Fund; and (b) any other financial institution having assets in excess of $500,000,000.00 and approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, Eligible Assignee shall not include any Loan Party or any Affiliate or Subsidiary of any Loan Party.

Eligible Inventory - as defined in the Revolving Credit Agreement.

Eligible Inventory Category - as defined in the Revolving Credit Agreement

Eligible Major Credit Card Receivables - as defined in the Revolving Credit Agreement.

Eligible Private Label and Corporate Accounts - as defined in the Revolving Credit Agreement.

Employee Benefit Plan - any employee benefit plan within the meaning of §3(3) of ERISA maintained or contributed to by the Borrowers or any ERISA Affiliate, other than a Guaranteed Pension Plan or a Multiemployer Plan.

Enforcement Action - any rightful action to enforce any Obligations or Loan Documents or to realize upon any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, or otherwise).

Environmental Agreement - each agreement of the Loan Parties with respect to any Real Estate subject to a Mortgage, pursuant to which the Loan Parties agree to indemnify and hold harmless the Administrative Agent and the Lenders from liability under any Environmental Laws, except for liability caused by any actions of the Administrative Agent or the Lenders which are in violation of the Environmental Laws.

Environmental Laws - all Applicable Laws (including all programs, permits and guidance promulgated by regulatory agencies), relating to public health (but excluding occupational safety and health, to the extent regulated by OSHA) or the protection or pollution of the environment, including CERCLA, RCRA and CWA.

Environmental Notice - a notice (whether written or oral) from any Governmental Authority or other Person of any possible noncompliance with, investigation of a possible violation of, litigation relating to, or potential fine or liability under any Environmental Law, or with respect to any Environmental Release, environmental pollution or hazardous materials, including any complaint, summons, citation, order, claim, demand or request for correction, remediation or otherwise.

Environmental Release - a release as defined in CERCLA or under any other Environmental Law.

Equipment - as defined in the UCC or the PPSA, as applicable, including all machinery, apparatus, equipment, fittings, furniture, fixtures, motor vehicles and other tangible personal Property (other than Inventory), and all parts, accessories and special tools therefor, and accessions thereto and, in any event, including all such Person s machinery and equipment, including processing equipment, conveyors, machine tools, data processing and computer equipment including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture, materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of real property, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto, and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto.

ERISA - the Employee Retirement Income Security Act of 1974, as amended and in effect from time to time.

ERISA Affiliate - any Person which is treated as a single employer with the Borrowers under §414(b), (c), (m) and (o) of the Code.

ERISA Reportable Event - a reportable event with respect to a Guaranteed Pension Plan within the meaning of §4043 of ERISA and the regulations promulgated thereunder.

Event of Default - as defined in **Section 11**.

Excluded Taxes - taxes, levies, imposts, deductions, charges or withholdings, including interest, penalties or additions thereto, and all related liabilities, imposed on or measured by net income or net profits of the relevant Lender or the Administrative Agent, capital taxes or franchise taxes imposed pursuant to the laws of Canada (including any province or territory thereof), the United States of America or by the jurisdiction under the laws of which the Lender or Agent is organized, in which such person is resident for tax purposes or in which the principal office or applicable lending office of such Lender or the Administrative Agent is located or in which it is otherwise deemed to be engaged in a trade or business for tax purposes or any subdivision thereof or therein, and any branch profits taxes imposed by the United States of America or any similar tax imposed by any jurisdiction on any Lender or the Administrative Agent.

Exempt Deposit Accounts - a depository account maintained by any of the Borrowers, the only contents of which may be transfers from its operating account and actually used solely (a) for petty cash purposes; or (b) for payroll, payroll Taxes and deductions and other employee wages and benefit payments to or for the benefit of the Borrowers salaried and hourly employees.

Extraordinary Expenses - all reasonable costs, expenses or advances that the Administrative Agent or any Lender may incur, whether prior to or during an Insolvency Proceeding of a Loan Party, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against the Administrative Agent, any Lender, any Loan Party, any representative of creditors of a Loan Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of the Administrative Agent s Liens with respect to any Collateral), Loan Documents or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of the Administrative Agent or any Lender in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any amendment, modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations; or (g) Protective Advances. Such costs, expenses and advances include transfer fees, taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers fees and commissions, auctioneers fees and commissions, accountants fees, environmental study fees, wages and salaries paid to employees of any Loan Party or independent contractors in liquidating any Collateral, and travel expenses.

Fiscal Quarter - each of the three month periods ending on the last Saturday of each of March, June, September and December of any year.

Fiscal Year - the twelve month period ending on the last Saturday of March of any year.

Fixed Charge Coverage Ratio - as at any date of determination, the ratio of (a) Consolidated EBITDA for the period of four consecutive Fiscal Quarters ending on such date, minus payments made in cash during such period in respect of Capital Expenditures incurred during such period or any previous period (other than that portion of such Capital Expenditures financed by lenders other than the Revolving Lenders), minus income taxes paid in cash with respect to such period to (b) Consolidated Fixed Charges for such period.

Fixtures - as such term is defined in the UCC, now owned or hereafter acquired by any Loan Party located at a parcel of Real Estate subject to a Mortgage.

FLSA - the Fair Labor Standards Act of 1938.

Foreign Lender - with respect to any Borrower, a Lender to such Borrower that is organized under the laws of a jurisdiction other than a state of the United States or the District of Columbia.

FSCO - the Financial Services Commission of Ontario and any Person succeeding to the functions thereof and includes the Superintendent under such statute and any other Governmental Authority empowered or created by the *Supplemental Pension Plans Act* (Québec) or the *Pension Benefits Act* (Ontario) or any Governmental Authority of any other Canadian jurisdiction exercising similar functions in respect of any Canadian Plan of any Loan Party or any Subsidiary or Affiliate of a Loan Party and any Governmental Authority succeeding to the functions thereof.

Full Payment - with respect to any Obligations, (a) the full and indefeasible cash payment thereof, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); (b) if such Obligations are inchoate or contingent in nature, Cash Collateralization thereof; and (c) a release of any Claims of the Loan Parties against the Administrative Agent and the Lenders arising on or before the payment date.

GAAP - generally accepted accounting principles in the United States in effect from time to time.

GB - GB Merchant Partners, LLC, a Delaware limited liability company, and its successors and assigns.

General Intangibles - as defined in the UCC, and Intangibles , as defined in the PPSA, as applicable, in each case including choses in action, causes of action, company or other business records, inventions, blueprints, designs, patents, patent applications, trademarks, trademark applications, trade names, trade secrets, service marks, goodwill, brand names, copyrights, registrations, licenses, franchises, customer lists, permits, tax refund claims, computer programs, operational manuals, internet addresses and domain names, insurance refunds and premium rebates, all rights to indemnification, and all other intangible Property of any kind.

General Security Agreement - the General Security Agreement by each Canadian Loan Party in favor of the Administrative Agent, for the benefit of the Secured Parties.

Goods - as defined in the UCC or the PPSA, as applicable.

Governmental Approvals - all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

Governmental Authority - any federal, state, provincial, territorial, municipal, foreign or other governmental department, agency, commission, board, bureau, court, tribunal, instrumentality, political subdivision, or other entity or officer exercising executive, legislative, judicial, regulatory or administrative functions for or pertaining to any government or court, in each case whether associated with the United States, a state, district or territory thereof, Canada, a province or territory thereof, or a foreign entity or government.

Guaranteed Obligations - as defined in **Section 7.7.1(a)**.

Guaranteed Pension Plan - any employee pension benefit plan within the meaning of §3(2) of ERISA maintained or contributed to by the Borrowers or any ERISA Affiliate the benefits of which are guaranteed on termination in full or in part by the PBGC pursuant to Title IV of ERISA, other than a Multiemployer Plan.

Guarantors - each Borrower as set forth in **Section 7.7** and each Subsidiary of a Borrower that has executed a Guaranty.

Guaranty - collectively, each guaranty of all or any portion of the Obligations executed by a Guarantor.

Hedging Agreement - an agreement relating to any swap, cap, floor, collar, option, forward, cross right or obligation, or combination thereof or similar transaction, with respect to interest rate, foreign exchange, currency, commodity, credit or equity risk.

Indemnitees - the Agent Indemnitees and the Lender Indemnitees.

Insolvency Proceeding - any case or proceeding commenced by or against a Person under any state, provincial, territorial, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, any Canadian Debtor Relief Law, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, interim receiver, trustee, liquidator, administrator, conservator, monitor or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

Instrument - as defined in the UCC or the PPSA, as applicable.

Intellectual Property - all intellectual and similar Property of a Person, including inventions, designs, patents, patent applications, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, registrations and franchises; all books and records describing or used in connection with the foregoing; and all licenses or other rights to use any of the foregoing.

Intellectual Property Claim - any claim or assertion (whether in writing, by suit or otherwise) that any Loan Party s or any Subsidiary s ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person s Intellectual Property.

Intercompany Debt - unsecured Debt of any Loan Party owing to another Loan Party; provided that (i) all such Debt shall be evidenced by promissory notes and all such notes shall be subject to a Lien in favor of the Administrative Agent pursuant to the Security Documents, (ii) all such Debt shall be unsecured and subordinated in right of payment to the Full Payment of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement that in each such case, is satisfactory to the Administrative Agent, and (iii) any payment by any such Loan Party to any other Loan Party under any guaranty of the Obligations or otherwise shall result in a *pro tanto* reduction of the amount of any Debt owed by such Loan Party to such other Loan Party for whose benefit such payment is made.

Intercreditor Agreement - the Intercreditor Agreement dated as of the Closing Date, by and among the Administrative Agent, the Revolving Agent and the Canadian Revolving Agent, and acknowledged by each Loan Party, as it may be amended, supplemented or otherwise modified from time to time.

Interest Payment Date - the first (1st) day of each month commencing on the first day of the month immediately following the Closing Date and continuing thereafter until the Maturity Date.

Interest Period - the one (1) month period immediately preceding the Interest Payment Date relating thereto.

Inventory - as defined in the UCC or the PPSA, as applicable, including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in such Person s business (but excluding Equipment).

Investment - any (a) acquisition of all or substantially all assets of, or any line of business or division of, a Person; (b) acquisition of record or beneficial ownership of any Capital Stock of a Person; (c) loan, advance or capital contribution to, guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guarantees Debt of such other Person, or (d) other investment in a Person.

Investment Property - as defined in the UCC or the PPSA, as applicable.

ITA - *Income Tax Act* (Canada), as the same may be amended from time to time, and any regulation promulgated thereunder.

Joint Venture - a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided that in no event shall any Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

Lender Indemnitees - the Lenders and their officers, directors, employees, Affiliates, branches, agents, advisors and attorneys.

Lenders - as defined in the preamble to this Agreement, including any other Person who hereafter becomes a Lender pursuant to the terms hereof. For the purposes of the Other Agreements and the Security Documents, Lenders means and is deemed to include the Secured Parties.

Letter-of-Credit Right - as defined in the UCC.

License - any license or agreement under which a Loan Party is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Licensor - any Person from whom a Loan Party obtains the right to use any Intellectual Property.

Lien - any Person s interest in Property securing an obligation owed to, or a claim by, such Person, whether such interest is based on common law, statute or contract, including liens, security interests, pledges, hypothecations, prior claims, rights of retention, statutory trusts, deemed trusts, reservations, exceptions, encroachments, easements, servitudes, rights-of-way, covenants, conditions, restrictions, leases, leasings, conditional sales and other title exceptions and encumbrances affecting Property.

Lien Priority Agreement - an agreement, in form and substance reasonably satisfactory to the Administrative Agent, in respect of any Collateral located in the province of Québec, Canada on premises owned by a Person that is not a Loan Party (the Owner), to which Owner a Loan Party has granted a hypothec, which agreement shall provide, without limitation, that such Owner waives or subordinates or cedes priority of preference and rank in any Lien it may have on any part of the Collateral in favor of the Administrative Agent.

Lien Waiver - an agreement, in form and substance reasonably satisfactory to the Administrative Agent, by which (a) for any Collateral located on a leased or mortgaged premises, the lessor or mortgagee waives or subordinates any Lien it may have on the Collateral, and agrees to permit the Administrative Agent to gain access to and enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for the Administrative Agent, agrees to permit the Administrative Agent to gain access to and enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral and/or agrees to deliver the Collateral to the Administrative Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges the Administrative Agent s Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to the Administrative Agent upon request; and (d) for any Collateral subject to a Licensor s Intellectual Property rights, the Licensor grants to the Administrative Agent the right, vis-à-vis such Licensor, to enforce the Administrative Agent s Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License, in each case, to the extent permitted by Applicable Law.

Loan Account - the loan account established by each Lender on its books pursuant to **Section 5.7**.

Loan Documents - this Agreement, the Other Agreements and the Security Documents.

Loan Party - each Borrower and each Guarantor.

Loan to Value Reserve - as defined in the Revolving Credit Agreement.

Loan Year - each calendar year commencing on the Closing Date and on each anniversary of the Closing Date.

Management Agreement - that certain Management Consulting Services Agreement, dated as of April 1, 2006, between the Canadian Borrower and Iniziativa S.A., as amended by the First Amendment to the Management Consulting Agreement, dated as of December 5, 2006, between the Canadian Borrower and Iniziativa S.A., as assigned by Iniziativa S.A. to Montrovest B.V. pursuant to that certain Assignment and Assumption Agreement, dated as of October 29, 2007, among Iniziativa S.A., Montrovest B.V. and the Canadian Borrower, as further amended by the extension letter agreements dated as of September 15, 2008 and November 14, 2008, as may be further amended from time to time in accordance with the terms hereof and the Management Subordination Agreement.

Management Debt - collectively, the management fees, out-of-pocket disbursements, all indemnification expenses, any success fees (including, without limitation, the Success Fee (as defined in the Management Subordination Agreement)) and all other obligations of the Borrowers to Montrovest B.V. pursuant to the Management Agreement.

Management Subordination Agreement - that certain Management Subordination Agreement dated as of the Closing Date among the Canadian Borrower, Montrovest B.V., the Canadian Revolving Agent, and the Administrative Agent.

Margin Stock - as defined in Regulation U of the Board of Governors.

Material Adverse Effect - the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, has or could be reasonably expected to have a material adverse effect on: (a) the business, operations, liabilities (actual or contingent), Properties, or condition (financial or otherwise) of the Loan Parties considered as a whole, or the value of the Collateral, taken as a whole, the enforceability of any Loan Documents, or on the validity or priority of the Administrative Agent s Liens on any Collateral; (b) the ability of the Loan Parties taken as a whole to perform any obligations under the Loan Documents, including repayment of any Obligations; (c) the rights and remedies of the Administrative Agent or the Lenders under the Loan Documents or the ability of the Administrative Agent or any Lender to enforce or collect the Obligations or to realize upon the Collateral or (d) the legality, validity, binding effect or enforceability of any Loan Document against any Loan Parties which is a party to such Loan Document.

Material Contract - any agreement or arrangement to which any Loan Party or any of its Subsidiaries is party (other than the Loan Documents) (a) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect, or (b) that relates to Debt in an aggregate amount of the Dollar Equivalent of $2,500,000 or more. Notwithstanding anything to the contrary, the term Material Contract shall include, for all purposes, each of the following: (i) the Revolving Loan Documents (and any refinancings, renewals or extensions thereof), (ii) the Brinkhaus Debt Documents, (iii) the Quebec Subordinated Debt Documents, (iv) the Rhode Island Debt Documents, and (v) the Rolex Documents.

Maturity Date - December 16, 2011.

Mayor s - Mayor s Jewelers, Inc., a Delaware corporation.

Mayor s Florida - Mayor s Jewelers of Florida, Inc. (f/k/a Mayor s Jewelers, Inc.), a Florida corporation.

Moody s - Moody s Investors Service, Inc., and its successors.

Mortgage - each mortgage, deed of trust, deed of hypothec, or deed to secure debt pursuant to which a Loan Party grants to the Administrative Agent, for the benefit of the Secured Parties, Liens upon the Real Estate interests (fee, leasehold or otherwise) then held by any Loan Party, as security for the Obligations.

Multiemployer Plan - any multiemployer plan within the meaning of §3(37) of ERISA maintained or contributed to by the Borrowers or any ERISA Affiliate and subject to Title IV of ERISA.

Non-Canadian Loan Party - any Loan Party that is not a Canadian Loan Party.

Non-Material Subsidiaries - collectively, Jan Bell Marketing - Puerto Rico, Inc., a corporation organized in the Commonwealth of Puerto Rico, Exclusive Diamonds International, Ltd., an Israeli company, and Regal Diamonds International (T.A.) Ltd., an Israeli company.

Notes - each promissory note executed by a Borrower to evidence any Obligations.

Obligations - all (a) principal of and premium, if any, on the Term Loan, (b) interest, expenses, fees and other sums payable by the Loan Parties under the Loan Documents, (c) obligations of the Loan Parties under any indemnity for Claims, (d) Extraordinary Expenses, and (f) other Debts, obligations and liabilities of any kind owing by the Loan Parties pursuant to the Loan Documents, in each case, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether or not allowed in any Insolvency Proceeding, whether arising from a loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several.

Ordinary Course of Business - the ordinary course of business of the Borrowers, the Guarantors or any of their Subsidiaries, consistent with past practices and undertaken in good faith.

Organizational Documents - with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation, organization or operation of such Person.

OSHA - the Occupational Safety and Hazard Act of 1970.

Other Agreements - the Intercreditor Agreement, the Post-Closing Agreement and each Note, Subordination Agreement, Related Real Estate Document, Borrowing Base Certificate, Compliance Certificate, financial statement or report delivered hereunder, together with each other document, instrument or agreement (other than this Agreement or a Security Document) now or hereafter delivered by a Loan Party or other Person to the Administrative Agent or a Lender in connection with any transactions relating hereto.

Participant - as defined in **Section 13.5**.

Patriot Act - the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Patent Security Agreement - the Patent Collateral Assignment and Security Agreement among the Loan Parties and the Administrative Agent.

Payment Intangible - as defined in the UCC.

Payment Item - cash and each check, draft, credit card slip, receipt, note, instrument and any other item of payment payable to a Borrower, including those constituting proceeds of any Collateral.

PBGC - the Pension Benefit Guaranty Corporation created by Section 4002 of ERISA and any successor entity or entities having similar responsibilities.

Pension Funding Rules - the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Guaranteed Pension Plans and set forth in, with respect to plan years ending prior to the effective date as to such Guaranteed Pension Plan of the Pension Protection Act of 2006, §412 of the Code and §302 of ERISA each as in effect prior to the Pension Protection Act of 2006 and, thereafter, §412 and §430 of the Code and §302 and §303 of ERISA.

Permitted Lien - as defined in **Section 10.2.2**.

Permitted Store Closings - commencing January 1, 2009, the closing of three (3) retail locations of the Loan Parties in any calendar year.

Person - any individual, corporation, limited or unlimited liability company, partnership, joint venture, joint stock company, land trust, business trust, unincorporated organization, Governmental Authority or other entity.

Post-Closing Agreement - that certain Post-Closing Agreement dated as of the Closing Date and entered into by and among the Loan Parties and the Administrative Agent, in form, scope and substance satisfactory to the Administrative Agent.

PPSA - the *Personal Property Security Act* of Ontario (or any successor statute) or similar legislation of any other Canadian jurisdiction, including, without limitation, the Civil Code of Québec, the laws of which are required by such legislation to be applied in connection with the issue, perfection, enforcement, opposability, enforceability, validity or effect of security interests or hypothecs.

Private Label Accounts - Accounts due on the Borrowers private label credit card programs.

Properly Contested - with respect to any obligation of any Loan Party, (a) the obligation is subject to a bona fide dispute regarding amount or such Loan Party s liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d); no Lien is imposed on assets of such Loan Party, unless bonded and stayed to the satisfaction of the Administrative Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

Property - any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

Pro Rata - with respect to any Lender, a percentage (expressed as a decimal, rounded to the fourth decimal place) determined by dividing the amount of such Lender s share of the Term Loan then outstanding by the Total Outstandings.

Protective Advance - as defined in **Section 2.1.4**.

Quebec Existing Subordinated Debt - all Debt owing to Investissement Québec (successor in interest to La Financière du Québec by virtue of decree 315-2004) under the Quebec Existing Subordinated Debt Documents in the original maximum principal amount of Cdn. $4,500,000, of which a balance in the aggregate principal amount not to exceed Cdn. $799,785.00 remains outstanding as of the Closing Date, and subject to the Quebec Subordination Agreement.

Quebec Existing Subordinated Debt Documents - that certain Offre de Prêt (Loan Offer) made by La Financière du Québec (now known as Investissement Québec) on February 7, 2003, and accepted by the Canadian Borrower on February 18, 2003, in respect of a term loan in the original maximum principal amount of Cdn. $4,500,000, and all security and other accessory documents or instruments thereto at any time.

Quebec New Subordinated Debt - all Debt owing to Investissement Québec under the Quebec New Subordinated Debt Documents in the original maximum principal amount of Cdn. $2,900,000, and subject to the Quebec Subordination Agreements.

Quebec New Subordinated Debt Documents - that certain Offre de Prêt (Loan Offer) from Investissement Québec to the Canadian Borrower on October 6, 2008, in respect of a term loan in the original maximum principal amount of Cdn. $2,900,000, and all security and other accessory documents or instruments thereto at any time, and subject at all times to the Quebec Subordination Agreement.

Quebec Security Documents - a deed of hypothec and issue of debentures charging the universality of all present and future movable property of the grantor thereunder, a debenture and a pledge of debenture agreement as contemplated by **Section 12.1.1(c)** executed and delivered by any Loan Party.

Quebec Subordinated Debt - collectively, (i) the Quebec Existing Subordinated Debt, (ii) the Quebec New Subordinated Debt, and (iii) all other Debt owing to Investissement Québec under the Quebec Subordinated Debt Documents, which Debt shall be expressly subordinate to Full Payment of the Obligations pursuant to the Quebec Subordination Agreement.

Quebec Subordinated Debt Documents - collectively, (i) the Quebec Existing Subordinated Debt Documents, (ii) the Quebec New Subordinated Debt Documents, and (iii) all other agreements, documents and instruments evidencing all or any portion of the Quebec Subordinated Debt.

Quebec Subordination Agreement - the subordination agreement among Investissement Québec, the Canadian Revolving Agent, the Revolving Agent and the Administrative Agent substantially in the form attached hereto as **Exhibit E** or such other subordination agreements in form, scope and substance satisfactory to the Administrative Agent and the Revolving Agent and agreed to in writing by the Administrative Agent and the Revolving Agent in their sole discretion.

RCRA - the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

Real Estate - all right, title and interest (whether as owner, lessor or lessee) in any real or immovable Property or any buildings, structures, parking areas or other improvements thereon.

Register - as defined in **Section 13.4**.

Related Parties - with respect to any Person, such Person s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person s Affiliates.

Related Real Estate Documents - with respect to any Real Estate subject to a Mortgage entered into by any Loan Party, the following, in form and substance reasonably satisfactory to the Administrative Agent and, in the case of a Mortgage entered into by any Loan Party after the date hereof, received by the Administrative Agent for review at least 15 days prior to the effective

date of the Mortgage (or such shorter length of time acceptable to the Administrative Agent in its reasonable discretion): (a) a mortgagee title policy (or binder therefor) covering the Administrative Agent s interest under the Mortgage, in a form and amount and by an insurer reasonably acceptable to the Administrative Agent, which must be fully paid on such effective date; (b) such assignments of leases, rents, estoppel letters, attornment agreements, consents, waivers and releases as the Administrative Agent may require with respect to other Persons having an interest in the Real Estate; (c) if otherwise in the possession of a Loan Party, a current, as-built survey of the Real Estate, containing a metes-and-bounds property description and flood plain certification, and certified by a licensed surveyor reasonably acceptable to the Administrative Agent; (d) flood insurance in an amount, with endorsements and by an insurer reasonably acceptable to the Administrative Agent, if the Real Estate is within a flood plain; (e) a current appraisal of the Real Estate, prepared by an appraiser reasonably acceptable to the Administrative Agent; (f) a Phase I (and to the extent appropriate, Phase II) environmental assessment report, prepared by an environmental consulting firm reasonably satisfactory to the Administrative Agent, and accompanied by such reports, certificates, studies or data as the Administrative Agent may reasonably require, which shall all be in form and substance reasonably satisfactory to the Administrative Agent; and (g) an Environmental Agreement and such other documents, instruments or agreements as the Administrative Agent may reasonably require with respect to any environmental risks regarding the Real Estate.

Report - as defined in **Section 12.2.3**.

Required Lenders - as of any date, Lenders (subject to **Section 4.2**) whose Pro Rata share of the Term Loan constitutes at least fifty-one percent (51%) of the Total Outstandings. For purposes of this definition only, a Lender and all Approved Funds with respect to such Lender shall constitute a single Lender.

Restricted Junior Payment - (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of the Borrowers or any Subsidiary now or hereafter outstanding, except a dividend payable solely in shares of that class of Capital Stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of the Borrowers or any Subsidiary now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of the Borrowers now or hereafter outstanding; (iv) any payment or prepayment of Debt by the Borrowers or their Subsidiaries to any Non-Material Subsidiary; (v) any payment or prepayment of Debt by the Borrowers or their Subsidiaries to the Borrowers or any Subsidiary s shareholders (or other equity holders); (vi) derivatives or other transactions with any financial institution, commodities or stock exchange or clearinghouse (a Derivatives Counterparty) obligating the Borrowers or any Subsidiary to make payments to such Derivatives Counterparty as a result of any change in market value of any Capital Stock of the Borrowers or such Subsidiary; or (vii) any payments on account of management, consulting or similar fees or any success fees (including, without limitation, the Management Debt) to (A) an equity holder of any Loan Party, which equity holder owns directly or indirectly at least fifty-one percent (51%) of the Voting Stock of such Loan Party (a Majority Holder), (B) an Affiliate of any Loan Party, or (C) an Affiliate of any Majority Holder of a Loan Party.

Revolving Agent - the Administrative Agent , as defined in the Revolving Credit Agreement.

Revolving Credit Agreement - the Amended and Restated Revolving Credit and Security Agreement dated as of the Closing Date by and between, among others, the Borrowers party thereto from time to time, the Guarantors party thereto from time to time, the Lenders party thereto from time to time, the Revolving Agent, and the Canadian Revolving Agent, as amended from time to time to the extent permitted hereunder and in accordance with the Intercreditor Agreement.

Revolving Borrowing Capacity - the Aggregate Borrowing Capacity , as defined in the Revolving Credit Agreement.

Revolving Lenders - the agents and the lenders under the Revolving Credit Agreement and the other Revolving Loan Documents.

Revolving Loans - the credit extensions (including, without limitation, the Loans (as defined in the Revolving Credit Agreement)) provided to the Borrowers by the Revolving Lenders under the Revolving Loan Documents.

Revolving Loan Debt - all Obligations (as defined in the Revolving Credit Agreement) owing to the Revolving Secured Parties under the Revolving Loan Documents.

Revolving Loan Documents - the Loan Documents under and as defined in the Revolving Credit Agreement.

Revolving Secured Parties - the Secured Parties , as defined in the Revolving Credit Agreement.

Rhode Island Creditor - individually and collectively, (i) Rhode Island Industrial-Recreational Building Authority, (ii) Small Business Loan Fund Corporation and (iii) ScoJen Limited Partnership.

Rhode Island Debt - all Debt owing to the Rhode Island Creditor under any Rhode Island Debt Documents in an aggregate amount not to exceed at any time $1,200,000, which Debt shall be expressly subordinate to the Full Payment of the Obligations pursuant to the Rhode Island Subordination Agreement.

Rhode Island Debt Documents - (i) that certain Bond Purchase Agreement dated as of March 24, 2005 by and among the Rhode Island Industrial Facilities Corporation, Rhode Island Industrial-Recreational Building Authority, Birks US, the Canadian Borrower and ScoJen Limited Partnership, (ii) that certain Loan Agreement dated as of March 24, 2005by and between Small Business Loan Fund Corporation and Birks US, (iii) that certain Leasehold Mortgage, Security Agreement and Assignment of Leases and Rents, dated as of March 24, 2005, by and among the Rhode Island Industrial Facilities Corporation, Birks US, and Small Business Loan Fund Corporation, (iv) that certain Security Agreement dated as of March 24, 2005 by and among the Canadian Borrower, ScoJen Limited Partnership, and the Rhode Island Industrial-Recreational Building Authority, (v) that certain Security Agreement dated as of March 24, 2005, by and among Rhode Island Industrial Facilities Corporation, Birks US, ScoJen Limited Partnership, and the Rhode Island Industrial-Recreational Building Authority, (vi) that certain Mortgage Deed, Leasehold Mortgage and Security Agreement dated as of March 24, 2005, by and among Rhode Island Industrial Facilities Corporation, Birks US, ScoJen Limited Partnership, and the Rhode Island Industrial-Recreational Building Authority, (vii) that certain Lease Agreement dated as of March 24, 2005 by and between Rhode Island Industrial Facilities Corporation and Birks

US, and (viii) all other agreements, documents and instruments executed in connection with or otherwise evidencing all or any portion of the Rhode Island Debt, in each case as in effect on the date hereof.

Rhode Island Subordination Agreement - the Amended and Restated Security Interest Subordination Agreement among the Revolving Agent, the Canadian Revolving Agent, the Administrative Agent, and the Rhode Island Creditor substantially in the form of **Exhibit F** hereto or such other subordination agreements in form, scope and substance satisfactory to the Revolving Agent and the Administrative Agent and agreed to in writing by the Revolving Agent and the Administrative Agent in their sole discretion.

Rolex Collateral - Collateral of any Loan Party consisting of Rolex, Tudor and Cellini watches, watchbands, parts and other accessories now or hereafter sold by Rolex Watch U.S.A., Inc. to such Loan Party, and all other new Rolex, Tudor and Cellini watches, watch bands, parts and other accessories hereinafter held by such Loan Party and all cash proceeds of any of the foregoing, including insurance proceeds (but specifically excluding accounts receivable), together with all rights and property of every kind at any time in the possession or control of Rolex Watch U.S.A., Inc., or any of its agents, or in transit to it, belonging to, for the account of, or subject to the order of such Loan Party.

Rolex Documents - collectively, (i) the Sales Agreement dated as of June 1, 2008 between Rolex Watch U.S.A., Inc. and Mayor s Florida (as amended and in effect on the Closing Date), and (ii) the Rolex Security Agreement.

Rolex Liens - Liens on the Rolex Collateral in favor of Rolex Watch U.S.A., Inc. to the extent that such Liens are junior and subordinate to the Liens securing the Obligations on terms and conditions satisfactory to the Administrative Agent.

Rolex Security Agreement - that certain Security Agreement dated as of July 29, 1998 between Mayor s Florida and Rolex Watch U.S.A., Inc., as amended by Amendment No. 1 to Security Agreement dated as of May 22, 2002 and as further amended by Amendment No. 2 to Security Agreement dated as of the Closing Date.

Rolex Subordination Agreement - Section 9 of the Rolex Security Agreement, as affirmed by Rolex Watch U.S.A., Inc. on the Closing Date pursuant to an acknowledgment letter from Rolex Watch U.S.A., Inc. and acknowledged by Mayor s Florida.

S&P - Standard & Poor s Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

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

Seasonal Availability Block - as defined in the Revolving Credit Agreement.

Secured Parties - the Administrative Agent and the Lenders.

Security Documents - this Agreement, each Guaranty, the Trademark Assignments, the Patent Security Agreement, the Stock Pledge Agreements, the Canadian Security Documents, and the Deposit Account Control Agreements, together with all security agreements, deeds of hypothec, pledge agreements, Mortgages or other collateral security agreements, instruments or documents (including Lien Waivers and Lien Priority Agreements) entered into or to be entered into by any Person pursuant to

which such Person grants or perfects a security interest in its assets to the Administrative Agent in order to secure any of the Obligations, including, without limitation PPSA and UCC financing statements and certified statements issued by the Québec Register of Personal and Movable Real Rights, required to be executed or delivered pursuant to any Security Document.

Senior Officer - the chairman of the board, president, chief executive officer, treasurer or chief financial officer of a Borrower or, if the context requires, a Loan Party.

Software - as defined in the UCC.

Solvent - as to any Person, such Person (a) owns Property whose Fair Salable Value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present Fair Salable Value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not insolvent within the meaning of Section 101(32) of the Bankruptcy Code (or, with respect to the Canadian Borrower or any Canadian Guarantor, is not an insolvent person within the meaning of the Bankruptcy and Insolvency Act (Canada)); and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. Fair Salable Value means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

Stock Pledge Agreements - collectively, (i) the Stock Pledge Agreement among the US Borrower, certain of the Guarantors and the Administrative Agent, and (ii) the Pledge Agreement between the Canadian Borrower and the Administrative Agent.

Subordinated Debt - collectively, the Brinkhaus Debt, the Management Debt, the Quebec Subordinated Debt, and the Rhode Island Debt.

Subordination Agreements - collectively, the Management Subordination Agreement, the Rolex Subordination Agreement, the Rhode Island Subordination Agreement, and the Quebec Subordination Agreement.

Subsidiary - of a Person means a corporation, partnership, joint venture, limited or unlimited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a Subsidiary or to Subsidiaries shall refer to any Subsidiary or Subsidiaries of any Borrower.

Supporting Obligation - as defined in the UCC.

Taxes - any taxes, levies, imposts, duties, fees, assessments, deductions, withholdings or other charges of whatever nature, including income, receipts, excise, property, sales, goods and services, use, transfer, license, payroll, withholding, social security, franchise, intangibles, mortgage, documentary, stamp or recording taxes imposed by any Governmental Authority, and all interest, penalties and similar liabilities relating thereto. For greater certainty, Taxes shall include all Taxes imposed pursuant to Part XIII of the ITA or any successor provisions thereto.

Term Loan - as defined in **Section 2.1.1**.

Term Loan Borrowing Capacity - at any time, an amount equal to the sum of (i) 102% of the Appraised Inventory Liquidation Value of each Eligible Inventory Category; plus (ii) 92% of the Appraised A/R Liquidation Value of Eligible Private Label and Corporate Accounts; plus (iii) 92% of the Eligible Major Credit Card Receivables; minus (and without any other duplication of Availability Reserves imposed by the Revolving Agent under the Revolving Credit Agreement) the sum of (A) the Availability Reserves, (B) the Availability Block, (C) the Seasonal Availability Block, (D) the Brinkhaus Reserve, (E) the Quebec Subordinated Debt Reserve, and (F) the Term Loan Discretionary Reserve.

Term Loan Discretionary Reserve - as defined in the Revolving Credit Agreement.

Term Loan Facility Amount - $13,000,000.

Termination Date - the earliest to occur of (i) the Maturity Date, (ii) the date on which the maturity of the Term Loan is accelerated in accordance with **Section 11.2**, (iii) the termination of the Revolving Credit Agreement, or (iv) the date of the occurrence of an Event of Default pursuant to **Section 11.1(j)**.

Total Outstandings - the aggregate principal balance of the Term Loan owing to all Lenders.

Trademark Assignments - the Trademark Collateral Security and Pledge Agreement made by the Borrowers and their Subsidiaries in favor of the Administrative Agent and the Assignments of Trademarks and Service Marks executed in connection therewith, all in form and substance satisfactory to the Administrative Agent.

Transferee - any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

UCC - the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code or other Applicable Law of such jurisdiction.

US Borrower - as defined in the preamble hereto.

US Concentration Account - a special concentration account established by the US Borrower with the Revolving Agent, subject to the control of the Control Agent.

US Guarantors - all Subsidiaries of the Borrowers that have executed a Guaranty and are organized under the laws of any political subdivision of the United States.

US Loan Parties - collectively, the US Borrower and the US Guarantors.

Voting Stock - with respect to any Person, means the Capital Stock or similar interests, of any class or classes (however designated), the holders of which are at the time entitled, as such holders, to, among other things, vote for the election of the directors (or persons performing similar functions) of the Person involved, whether or not the right so to vote exists by reason of the happening of a contingency.

1.2. Accounting Terms. Under the Loan Documents (except as otherwise specified herein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of the Borrowers delivered to the Administrative Agent before the Closing Date and using the same inventory valuation method as used in such financial statements, except for any change required or permitted by GAAP if the Borrowers certified public accountants concur in such change and the change is disclosed to the Administrative Agent. If any such accounting change results in a change in any of the calculations required by **Section 10.2.12** that would not have resulted had such accounting change not occurred, the parties hereto agree to enter into negotiations in order to amend such provisions so as to equitably reflect such change such that the criteria for evaluating compliance with such covenants by the Borrowers shall be the same after such change as if such change had not been made; provided, however, that no change in GAAP that would affect a calculation that measures compliance with any covenant contained in **Section 10.2.12** shall be given effect until such provisions are amended to reflect such changes in GAAP.

1.3. Certain Matters of Construction. The terms herein, hereof, hereunder and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, from means from and including, and to and until each mean to but excluding. T terms including and include shall mean including, without limitation and, for purposes of each Loan Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document. All references to (a) laws or statutes include all related rules, regulations, interpretations, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Loan Documents); (c) any section means, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and assigns; or (f) discretion of the Administrative Agent or any Lender means the sole and absolute discretion of such Person. Unless the context otherwise requires, all determinations (including calculations of the Term Loan Borrowing Capacity, Aggregate Excess Availability and Fixed Charge Coverage Ratio) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. The Term Loan Borrowing Capacity calculations shall be consistent with historical methods of valuation and calculation, and otherwise reasonably satisfactory to the Administrative Agent (and not necessarily calculated in accordance with GAAP). The Borrowers shall have the burden of establishing any alleged negligence, misconduct or lack of good faith by the Administrative Agent or any Lender under any Loan Documents. No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. For purposes of any Collateral located in the Province of Quebec or charged by any deed of hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of a Loan Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (i) personal property shall be deemed to include movable property , (ii) real property shall be deemed to include immovable property and an easement shall be deemed to include a servitude , (iii) tangible property shall be deemed to include corporeal property , (iv) intangible property shall be deemed to include incorporeal property , (v) security interest and mortgage shall be deemed to include a

hypothec , (vi) all references to filing, registering or recording under the PPSA or UCC shall be deemed to include publication under the Civil Code of Quebec, and all references to releasing any Lien shall be deemed to include a release, discharge and mainlevee of a hypothec, (vii) all references to perfection of or perfected Liens shall be deemed to include a reference to the opposability of such Liens to third parties, (viii) any right of offset , right of setoff or similar expression shall be deemed to include a right of compensation , (ix) goods shall be deemed to include corporeal movable property other than chattel paper, documents of title, instruments, money and securities, and (x) an agent shall be deemed to include a mandatary .

1.4. [Reserved.]

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. Conversions of Foreign Currencies. The Administrative Agent shall determine the Dollar Equivalent of any amount as required hereby, and a determination thereof by the Administrative Agent shall be conclusive absent manifest error. The Administrative Agent may, but shall not be obligated to, rely on any determination made by any Loan Party in any document delivered to the Administrative Agent. The Administrative Agent may determine or redetermine the Dollar Equivalent of any amount on any date either in its own discretion or upon the request of any Lender. The Administrative Agent may set up appropriate rounding off mechanisms or otherwise round-off amounts hereunder to the nearest higher or lower amount in whole Dollar or cent to ensure amounts owing by any party hereunder or that otherwise need to be calculated or converted hereunder are expressed in whole Dollars or in whole cents, as may be necessary or appropriate.

SECTION 2. CREDIT FACILITY

2.1. Term Loan Facility.

2.1.1. **Term Loan.** (a) Subject to the terms and conditions set forth in this Agreement, on the Closing Date, each Lender shall make to the Borrowers a term loan in the principal amount equal to the lesser of such Lender s Commitment or its Pro Rata share of Thirteen Million Dollars ($13,000,000) (such aggregate amount, the Term Loan). The Commitments shall be terminated upon the funding on the Term Loan on the Closing Date. The Term Loan is not a revolving credit facility and may not be repaid and redrawn and any repayments or prepayments of principal on the Term Loan shall permanently reduce the Term Loan. The obligations of the Lenders hereunder are several and not joint or joint and several. Each Borrower irrevocably authorizes the Administrative Agent and the Lenders to disburse the proceeds of the Term Loan on the Closing Date in accordance with the terms of this Agreement. The entire unpaid principal balance of the Term Loan shall be due and payable on the Termination Date.

(b) Term Loan Borrowing Capacity. The Combined Total Outstandings shall not exceed the lesser of the Term Loan Borrowing Capacity or the Combined Loan Cap. Until the Full Payment (as defined in the Revolving Credit Agreement) of the Revolving Loan Debt and the termination of the Commitments (as defined in the Revolving Credit Agreement), the Term Loan Borrowing Capacity shall be determined from time to time by the Revolving Agent (subject to the limitations contained in the Intercreditor Agreement) by reference to the most recent Borrowing Base Certificate delivered by the Borrowers.

(c) Term Loan Discretionary Reserve. The Borrowers hereby acknowledge and agree that the Administrative Agent may require that the Revolving Agent impose the Term Loan Discretionary Reserve, in accordance with the terms of the Intercreditor Agreement, at any time.

2.1.2. **Notes.** The Pro Rata share of the Term Loan made by each Lender and interest accruing thereon shall be evidenced by the records of the Administrative Agent and such Lender. At the request of any Lender, the Borrowers shall deliver a Note to such Lender.

2.1.3. **Use of Proceeds.** The proceeds of the Term Loan shall be used by the Borrowers solely (a) to pay fees and transaction expenses associated with the closing of this credit facility; and (b) to reduce the Revolving Loan Debt to create availability under the Revolving Borrowing Capacity for use by the Borrowers for working capital and other lawful corporate purposes of the Borrowers and their Subsidiaries in accordance with this Agreement and the Revolving Credit Agreement.

2.1.4. **Protective Advances.** The Administrative Agent shall be authorized, in its discretion, at any time (including any time that a Default or Event of Default exists), to make advances (Protective Advances), if the Administrative Agent deems such Protective Advances necessary or desirable to, directly or indirectly, (A) maintain, protect or preserve the value of the Collateral and/or the Administrative Agent s rights therein as determined in the discretion of the Administrative Agent, including to preserve the Loan Parties business assets and infrastructure (such as the payment of insurance premiums, taxes, necessary suppliers, rent and payroll, including without limitation any other payments made concurrently with a payment relating to the maintenance, protection or preservation of value of the Collateral and/or the Administrative Agent s rights therein or for the preservation of the Loan Parties business assets or infrastructure which is made incidentally as a result of the ordinary course operation of the Loan Parties treasury management functions), (B) implement and exercise an Enforcement Action with respect to the Collateral, (C) fund an orderly liquidation or wind-down of the Loan Parties assets or business or an Insolvency Proceeding (whether or not occurring prior to or after the commencement of an Insolvency Proceeding), (D) enhance the likelihood, or maximize, the repayment of the Obligations, (E) reflect currency fluctuations, or (F) pay any other amounts chargeable to the Loan Parties under any Loan Documents, including costs, fees and expenses. Each Lender shall participate in each Protective Advance on a Pro Rata basis. The Protective Advances shall be secured by the Collateral, shall constitute Obligations hereunder and shall be treated for all purposes as Extraordinary Expenses. The Administrative Agent shall provide the Borrower Agent with written notice of any Protective Advances, provided that failure to provide such notice shall not constitute a default by the Administrative Agent hereunder. In no event shall Protective Advances be required to be made at any time. Any sufferance of a Protective Advance shall not constitute a waiver by the Administrative Agent or the Lenders of the Event of Default caused thereby. In no event shall any Borrower or other Loan Party be deemed a beneficiary of this Section nor authorized to enforce any of its terms.

2.2. Mandatory Prepayments. If at any time the Combined Total Outstandings exceeds the Term Loan Borrowing Capacity then in effect, then (i) until the Full Payment of the Revolving Loan Debt, the Borrowers shall immediately prepay the Revolving Loan Debt, and (ii) thereafter, the Borrowers shall immediately prepay the Term Loan, for the respective accounts of the Lenders in accordance with their Pro Rata share thereof, in each case in an amount necessary to eliminate such excess.

SECTION 3. INTEREST, FEES AND CHARGES

3.1. Rates and Payment of Interest.

3.1.1. **Interest Rate.** Subject to **Section 3.1.2**, the Obligations shall bear interest at a rate equal to the greater of (A) Adjusted LIBOR plus twelve percent (12.00%) per annum, or (B) sixteen percent (16.00%) per annum. If (i) the Administrative Agent shall determine that on any date for determining Adjusted LIBOR, adequate and fair means do not exist for ascertaining such rate on the basis provided herein, or (ii) any change in any law or interpretation thereof, made after the date hereof, by any Governmental Authority makes it unlawful for a Lender to maintain its Pro Rata share of the Term Loan bearing interest with reference to Adjusted LIBOR as provided herein, then, in each case, subject to **Section 3.1.2**, the Obligations shall bear interest at the rate set forth in clause (B) hereof.

3.1.2. **Default Interest.** During any Event of Default described in **Section 11.1(a)**, all Obligations shall bear interest at the Default Rate. During any other Event of Default, at the option of the Administrative Agent or upon the request of the Required Lenders, all Obligations shall bear interest at the Default Rate. Each Borrower acknowledges that the cost, expense and risk to the Administrative Agent and each Lender due to an Event of Default are difficult to ascertain and that the Default Rate is a fair and reasonable estimate to compensate the Administrative Agent and the Lenders for such added cost, expense and risk

3.1.3. **Payment of Interest.** Interest accrued on the Obligations shall be due and payable in arrears, and each of the Borrowers promises to pay interest to the Lenders (i) with respect to the Term Loan, on each Interest Payment Date, (ii) on any date of prepayment, with respect to the principal amount of the Term Loan being prepaid, and (iii) on the Termination Date. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents and, if no payment date is specified, shall be due and payable **on demand**. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable **on demand.**

3.2. Fees.

3.2.1. **Early Termination Fee.** In the event that prior to the Maturity Date, the Borrowers prepay or are otherwise required to prepay all or any part of the Term Loan for any reason, the Borrowers shall pay to the Administrative Agent, for the ratable benefit of the Lenders, a fee (the Early Termination Fee) in respect of amounts which are prepaid or are or become payable by reason thereof equal to the greater of (a) the interest which would otherwise be paid pursuant to **Section 3.1** within the first eighteen (18) months following the Closing Date on such amounts so prepaid or payable at the rate then in effect, minus any actual payments of such interest made by the Borrowers for such period, and (b) one and one-half percent (1.50%) of the amounts so prepaid. All parties to this Agreement agree and acknowledge that the Lenders will have suffered damages on account of the early termination of this Agreement and that, in view of the difficulty in ascertaining the amount of such damages, the Early Termination Fee constitutes reasonable compensation and liquidated damages to compensate the Lenders on account thereof.

3.2.2. **Commitment Fee.** In consideration of the establishment of the credit facility under this Agreement, the Borrowers agree to pay a fee (the Commitment Fee) to the Administrative Agent, for the account of the Lenders on a Pro Rata basis, in an amount equal to three and one-half percent (3.50%) of the Term Loan Facility Amount (such amount being equal to $455,000.00), on the Closing Date. The Commitment Fee shall be fully earned and payable as of the Closing Date and shall not be subject to refund or rebate under any circumstances.

3.2.3. **Agent Monitoring Fee.** The Borrowers agree to pay to the Administrative Agent, on the Closing Date and each anniversary thereof through the later to occur of (i) the Maturity Date, and (ii) the Full Payment of the Obligations, a monitoring fee (the Agent Monitoring Fee) in the amount of $25,000.

3.3. Computation of Interest, Fees, Yield Protection. All computation of interest, as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed, based on a year of 360 days. Each determination by the Administrative Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate or refund, nor subject to proration except as specifically provided herein. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by the Borrowers under **Section 3.4, 3.7** or **5.8**, submitted to the Borrowers by the Administrative Agent or the affected Lender, as applicable, shall be final, conclusive and binding for all purposes, absent manifest error. For the purpose of complying with the Interest Act (Canada), it is expressly stated that where interest or a fee is calculated pursuant hereto at a rate based upon a 360-day period (for the purposes of this Section, the first rate), the yearly rate or percentage of interest to which the first rate is equivalent is the first rate multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360, and the parties hereto acknowledge that there is a material distinction between the nominal and effective rates of interest and that they are capable of making the calculations necessary to compare such rates and that the calculations herein are to be made using the nominal rate method and not on any basis that gives effect to the principle of deemed reinvestment of interest.

3.4. Reimbursement Obligations. The Borrowers shall reimburse the Administrative Agent and the Lenders for all Extraordinary Expenses. Without duplication, the Borrowers shall also reimburse the Administrative Agent and the Lenders for all reasonable legal, accounting, appraisal, consulting, and other fees, costs and expenses incurred by it in connection with (a) negotiation, preparation, execution and delivery of any Loan Documents, including any amendment or other modification thereof (whether or not the transactions contemplated hereby or thereby shall be consummated); (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of the Administrative Agent s Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral; and (c) subject to the limits of **Section 10.1.1(b)**, each inspection, audit or appraisal with respect to any Loan Party or Collateral, whether prepared by the Administrative Agent s or any Lender s personnel or a third party. The Borrowers shall also reimburse the Administrative Agent and the Lenders for all reasonable costs and expenses incurred by them (whether during an Event of Default or otherwise) in connection with the enforcement or preservation of any rights under this Agreement or any of the other Loan Documents (including during any workout, restructuring or negotiations in respect of the Term Loan, Loan Documents or the transactions contemplated thereby). All amounts reimbursable by the Borrowers under this **Section 3.4** shall constitute Obligations secured by the Collateral and shall be payable within twenty Business Days after presentation by the Administrative Agent or the applicable Lender to the Borrowers of a reasonably detailed itemization of such amounts.

3.5. [Reserved.]

3.6. [Reserved.]

3.7. Capital Adequacy. If a Lender determines that any introduction of or any change in a Capital Adequacy Regulation, any change in the interpretation or administration of a Capital Adequacy Regulation by a Governmental Authority charged with interpretation or administration thereof, or any compliance by such Lender or any Person controlling such Lender with a Capital Adequacy Regulation, in each case made after the date hereof, increases the amount of capital required or expected to be maintained by such Lender or Person (taking into consideration its capital adequacy policies and desired return on capital) as a consequence of such Lender s Pro Rata share of the Term Loan or other obligations under the Loan Documents, then the Borrowers shall, within ten days following demand therefor, pay such Lender an amount sufficient to compensate for such increase. A Lender s demand for

payment shall set forth the nature of the occurrence giving rise to such compensation and a calculation of the amount to be paid. In determining such amount, the Lender may use any reasonable averaging and attribution method.

3.8. Mitigation. Each Lender agrees that, upon becoming aware that it is subject to **Section 3.7** or **5.8**, it will take reasonable measures to reduce the Borrowers obligations under such Sections, including maintaining such Lender s Pro Rata share of the Term Loan through another office, as long as use of such measures would not adversely affect such Lender s Pro Rata share of the Term Loan, business or interests, and would not be inconsistent with any applicable legal or regulatory restriction.

3.9. [Reserved.]

3.10. Maximum Interest. In no event shall interest, charges or other amounts that are contracted for, charged or received by the Administrative Agent and the Lenders pursuant to any Loan Documents and that are deemed interest under Applicable Law (interest) exceed the highest rate permissible under Applicable Law (maximum rate). If, in any period, any interest rate, absent the foregoing limitation, would have exceeded the maximum rate, then the interest rate for that month shall be the maximum rate and, if in a future month, that interest rate would otherwise be less than the maximum rate, then the rate shall remain at the maximum rate until the amount of interest actually paid equals the amount of interest which would have accrued if it had not been limited by the maximum rate. If, upon payment in full, in cash, of the Obligations, the total amount of interest actually paid under the Loan Documents is less than the total amount of interest that would, but for this **Section 3.10**, have accrued under the Loan Documents, then the Borrowers shall, to the extent permitted by Applicable Law, pay to the Administrative Agent, for the account of the Lenders, (a) the lesser of (i) the amount of interest that would have been charged if the maximum rate had been in effect at all times, or (ii) the amount of interest that would have accrued had the interest rate otherwise set forth in the Loan Documents been in effect, minus (b) the amount of interest actually paid under the Loan Documents. If a court of competent jurisdiction determines that the Administrative Agent or any Lender has received interest in excess of the maximum amount allowed under Applicable Law, such excess shall be deemed received on account of, and shall automatically be applied to reduce, Obligations other than interest (regardless of any erroneous application thereof by the Administrative Agent or any Lender), and upon payment in full, in cash of the Obligations, any balance shall be refunded to the Borrowers. In determining whether any excess interest has been charged or received by the Administrative Agent or any Lender, all interest at any time charged or received from the Borrowers in connection with the Loan Documents shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the Obligations.

3.11. Replacement of the Lenders. In the event that any Lender is a Defaulting Lender (each an Affected Lender), then the Borrower Agent may, at its option, notify the Administrative Agent and such Affected Lender of its intention to replace the Affected Lender. So long as no Default or Event of Default shall have occurred and be continuing, the Borrower Agent, with the consent of the Administrative Agent, may obtain, at the Borrowers expense, a replacement Lender (Replacement Lender) for the Affected Lender, which Replacement Lender must be (i) an Eligible Assignee and (ii) satisfactory to the Administrative Agent. If the Borrowers obtain a Replacement Lender within ninety (90) days following notice of their intention to do so, the Affected Lender must sell and assign its Pro Rata share of the Term Loan to such Replacement Lender for an amount equal to the principal balance of its Pro Rata share of the Term Loan held by the Affected Lender and all accrued interest and fees with respect thereto through the date of such sale; provided that the Borrowers shall have reimbursed such Affected Lender for the additional amounts or increased costs that it is entitled to receive under this Agreement through the date of such sale and assignment. Furthermore, if the Borrower Agent gives

a notice of intention to replace and does not so replace such Affected Lender within ninety (90) days thereafter, the Borrowers rights under this paragraph as to such noticed replacement and in connection with such Affected Lender shall terminate.

SECTION 4. LOAN ADMINISTRATION

4.1. [Reserved.]

4.2. Defaulting Lender. If a Lender fails to make any payment to the Administrative Agent that is required hereunder (a Defaulting Lender), the Administrative Agent may (but shall not be required to), in its discretion, retain payments that would otherwise be made to such Defaulting Lender hereunder and apply the payments to such Lender s defaulted obligations. The failure of any Lender to fund a portion of the Term Loan in an amount equal to such Lender s Commitment shall not relieve any other Lender of its obligations hereunder, and no Lender shall be responsible for default by another Lender. The Lenders and the Administrative Agent agree (which agreement is solely among them, and not for the benefit of or enforceable by any Borrower) that, solely for purposes of determining a Defaulting Lender s right to vote on matters relating to the Loan Documents and to share in payments, fees and Collateral proceeds thereunder, a Defaulting Lender shall not be deemed to be a Lender until all its defaulted obligations have been cured.

4.3. [Reserved.]

4.4. The Borrower Agent. Each Borrower hereby designates the US Borrower (Borrower Agent) as its representative and agent for all purposes under the Loan Documents, including delivery or receipt of communications with the Administrative Agent or any Lender, preparation and delivery of Borrowing Base Certificates and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with the Administrative Agent or any Lender. The Borrower Agent hereby accepts such appointment. The Administrative Agent and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by the Borrower Agent on behalf of any Borrower. The Administrative Agent and the Lenders may give any notice or communication with a Borrower hereunder to the Borrower Agent on behalf of such Borrower. The Administrative Agent shall have the right, in its discretion, to deal exclusively with the Borrower Agent for any or all purposes under the Loan Documents. Each Borrower agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by the Borrower Agent shall be binding upon and enforceable against it.

4.5. Effect of Termination. On the Termination Date, all Obligations shall be immediately due and payable. All undertakings of the Borrowers contained in the Loan Documents shall survive any termination, and the Administrative Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents until Full Payment of the Obligations (including all accrued and unpaid principal, interest and fees, and any other Obligations then due and owing, and any appropriate collateral deposits in connection therewith). Notwithstanding such Full Payment of the Obligations (including all accrued and unpaid principal, interest and fees, and any other Obligations then due and owing, and any appropriate collateral deposits in connection therewith), the Administrative Agent shall not be required to terminate its Liens in any Collateral unless, with respect to any damages the Administrative Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, the Administrative Agent receives (a) a written agreement, executed by the Borrowers and any Person whose advances are used in whole or in part to satisfy the Obligations, indemnifying the Administrative Agent and the Lenders from any such damages; (b) such Cash Collateral as the Administrative Agent, in its discretion, deems necessary to protect against any such damages; or (c) such other protections as the

Administrative Agent, in its discretion, deems necessary to protect against any such damages. The provisions of **Sections 3.4, 3.7, 4.5, 5.4, 5.8, 12,** and **14.2**, and the obligation of each Loan Party and the Lender with respect to each indemnity given by it in any Loan Document, shall survive Full Payment of the Obligations and any release relating to this credit facility.

SECTION 5. PAYMENTS

5.1. General Payment Provisions. All payments of Obligations shall be made in Dollars, without condition, offset, counterclaim, recoupment or defense of any kind, free of (and without deduction for) any Taxes, and in immediately available funds, not later than 2:00 p.m. on the due date. Any payment after such time shall be deemed made on the next Business Day. The Borrowers may, at the time of payment, specify to the Administrative Agent the Obligations to which such payment is to be applied, but the Administrative Agent shall in all events retain the right to apply such payment in such manner as the Administrative Agent, subject to the provisions hereof, may determine to be appropriate. If any payment under the Loan Documents shall be stated to be due on a day other than a Business Day, the due date shall be extended to the next Business Day and such extension of time shall be included in any computation of interest and fees. Unless the Administrative Agent shall have received notice from a Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if a Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the federal funds rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

5.2. Repayment of Term Loan. The Term Loan and all other Obligations shall be due and payable in full on the Maturity Date, unless payment is sooner required hereunder pursuant to **Section 11.2**. The Borrower promises to pay on the Maturity Date, or on such earlier date as payment is required hereunder pursuant to **Section 11.2**, and there shall become absolutely due and payable on such date, the Total Outstandings, together with any and all accrued and unpaid interest thereon and all other fees and other amounts then accrued and outstanding with respect thereto. The Term Loan may be prepaid in accordance with **Section 5.1** and **Section 5.5**.

5.3. Payment of Other Obligations. Obligations other than the Term Loan, including Extraordinary Expenses, shall be paid by the Borrowers as provided in the Loan Documents or, if no payment date is specified, promptly upon receipt by the Borrowers of notice of the amounts due in connection therewith.

5.4. Marshaling; Payments Set Aside. None of the Administrative Agent or the Lenders shall be under any obligation to marshal any assets in favor of any Loan Party or against any Obligations. If any Loan Party makes a payment to the Administrative Agent or the Lenders, or if the Administrative Agent or any Lender receives payment from the proceeds of Collateral, exercise of setoff or otherwise, and such payment is subsequently invalidated or required to be repaid to a trustee, receiver or any other Person, then the Obligations originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been received and any enforcement or setoff had not occurred.

5.5. Allocation of Payments.

5.5.1. **Allocation of Payments.** Notwithstanding anything herein to the contrary (but subject to the Intercreditor Agreement), at all times, all funds received by the Administrative Agent or any Lender and for which a Borrower has received credits, together with all payments to be initially applied to the Obligations, whether arising from payments by the Loan Parties, realization on Collateral, setoff or otherwise, shall be applied to the Obligations as follows:

(a) first, to all costs and expenses, including Extraordinary Expenses, owing to the Administrative Agent;

(b) second, to all amounts owing to the Administrative Agent on Protective Advances;

(c) third, to all Obligations constituting fees owing to the Lenders;

(d) fourth, to all Obligations constituting interest on the Term Loan;

(e) fifth, to all Obligations constituting principal of the Term Loan; and

(f) sixth, to all other Obligations owing to the Lenders.

Amounts shall be applied to each category of Obligations set forth above until the payment in full thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. The allocations set forth in this **Section 5.5.1** are solely to determine the rights and priorities of the Administrative Agent and the Lenders as among themselves, and may be changed by agreement among them without the consent of any Loan Party. Any amounts applied to the categories described in clauses (c), (d), (e) and (f) shall be so applied in accordance with each Lender s Pro Rata share of the Term Loan.

5.5.2. **Erroneous Application**. The Administrative Agent shall not be liable for any application of amounts made by it in error (unless it has been determined in a final, non-appealable judgment by a court of competent jurisdiction that such error was a result of the gross negligence or willful misconduct of the Administrative Agent) and if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been made (unless it has been determined in a final, non-appealable judgment by a court of competent jurisdiction that such error was a result of the gross negligence or willful misconduct of the Administrative Agent) shall be to recover the amount from the Person that actually received it (and, if such amount was received by any Lender, such Lender hereby agrees to return it).

5.6. [Reserved.]

5.7. Loan Account; Account Stated.

5.7.1. **Loan Account.** The Administrative Agent shall maintain in accordance with its usual and customary practices an account or accounts (Loan Account) evidencing the Debt of the Borrowers resulting from the Term Loan from time to time. Any failure of the Administrative Agent to record anything in the Loan Account, or any error in doing so, shall not limit or otherwise affect the obligation of the Borrowers to pay any amount owing hereunder. The Administrative Agent may maintain a single Loan Account in the name of the Borrower Agent.

5.7.2. **Entries Binding.** Entries made in the Loan Account shall constitute presumptive evidence of the information contained therein. If any information contained in the Loan Account is provided to or inspected by any Person, then such information

shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies the Administrative Agent in writing within 30 days after receipt or inspection that specific information is subject to dispute.

5.8. Taxes.

5.8.1. **Generally.** If any Taxes (except Excluded Taxes) shall be payable by any party due to the execution, delivery, issuance or recording of any Loan Documents, or the creation or repayment of any Obligations, the Borrowers shall pay (and shall promptly reimburse the Administrative Agent and the Lenders for their payment of) all such Taxes, including any interest and penalties thereon, and will indemnify and hold harmless Indemnitees against all liability in connection therewith.

5.8.2. **Withholding Taxes.** All payments to the Administrative Agent or the Lenders (or any successor or assignee thereof) by a Loan Party under this Agreement or any other Loan Document shall be made free and clear of and without deduction or withholding for any and all Taxes (other than Excluded Taxes) unless required by Applicable Law. If any Loan Party shall be required by Applicable Law to withhold or deduct any Taxes (except Excluded Taxes) with respect to any sum payable under any Loan Documents, (a) the sum payable to the Administrative Agent or such Lender shall be increased as may be necessary so that, after making all required withholding or deductions (including withholding or deduction applicable to additional amounts paid under this **Section 5.8.2**), the Administrative Agent or such Lender (as the case may be) receives an amount equal to the sum it would have received had no such withholding or deductions been made; (b) such Loan Party shall make such withholding or deductions; and (c) such Loan Party shall pay the full amount withheld or deducted to the relevant taxing or other authority in accordance with Applicable Law.

5.8.3. **Indemnity.** Each Loan Party shall indemnify and hold harmless each of the Lenders and the Administrative Agent for the full amount of Taxes (other than Excluded Taxes) imposed on or paid by such Lender or the Administrative Agent and any liability (including penalties, interest and expenses payable or incurred in connection therewith) arising from or with respect to such Taxes, whether or not they were correctly or legally asserted. Payment under this indemnification shall be made within 30 days from the date the Administrative Agent or the relevant Lender, as the case may be, makes written demand for it. A certificate containing reasonable detail as to the amount of such Taxes submitted to the relevant Loan Party by the Administrative Agent or the relevant Lender shall be conclusive evidence, absent manifest error, of the amount due from such Borrower to the Administrative Agent or such Lender, as the case may be.

5.8.4. **Survival.** Notwithstanding anything contained herein to the contrary, the provisions of this **Section 5.8** shall survive the expiration or termination of this Agreement and the other Loan Documents.

5.9. Withholding Tax Exemption. At least five Business Days prior to the first date for payment of interest or fees hereunder to a Foreign Lender, the Foreign Lender shall, if applicable, deliver to the Borrowers and the Administrative Agent two duly completed copies of IRS Form W-8BEN or W-8ECI (or any subsequent replacement or substitute form therefor), certifying that such Lender can receive payment of Obligations without deduction or withholding of any United States federal income taxes. Each Foreign Lender shall deliver to the Borrowers and the Administrative Agent two additional copies of such form before the preceding form expires or becomes obsolete or after the occurrence of any event requiring a change in the form, as well as any amendments, extensions or renewals thereof as may be reasonably requested by the Borrowers or the Administrative Agent, in each case, certifying that the

Foreign Lender can receive payment of Obligations without deduction or withholding of any such taxes, unless an event (including any change in treaty or law) has occurred that renders such forms inapplicable or prevents the Foreign Lender from certifying that it can receive payments without deduction or withholding of such taxes. During any period that a Foreign Lender does not or is unable to establish that it can receive payments without deduction or withholding of such taxes, other than by reason of an event (including any change in treaty or law) that occurs after it becomes a Lender, the Administrative Agent may withhold taxes from payments to such Foreign Lender at the applicable statutory and treaty rates, and the Borrowers shall not be required to pay any additional amounts under **Section 5.8** or this **Section 5.9** as a result of such withholding. Each Lender or the Administrative Agent that is organized under the laws of the United States, or any state or district thereof shall provide to the US Borrower (and in the case of a Lender, to the Administrative Agent) two duly executed copies of IRS Form W-9. In the event that any Lender or the Administrative Agent does not comply with the requirements of this **Section 5.9**, the relevant Borrower may withhold taxes from payments to such Lender or the Administrative Agent as required by Applicable Law. In the event of the resignation of the Administrative Agent pursuant to **Section 12.8** hereunder, the successor Administrative Agent shall be subject to the provisions of this **Section 5.9** in the same manner as a its predecessor Administrative Agent, and shall be required to provide the appropriate IRS Form W-8BEN or W-8ECI to the US Borrower as required in this **Section 5.9**. In the event that the successor Administrative Agent does not comply with the requirements of this **Section 5.9**, the Borrowers may withhold taxes from payments to such successor Administrative Agent as required by Applicable Law.

5.10. Currency Matters. Dollars are the currency of account and payment for each and every sum at any time due from the Borrowers hereunder.

SECTION 6. CONDITIONS PRECEDENT

6.1. Conditions Precedent to Effectiveness of Agreement. This Agreement shall not be effective and the Lenders shall not be required to fund their respective portions of the Term Loan hereunder until the date (Closing Date) that each of the following conditions has been satisfied (in each case, in form and substance satisfactory to the Administrative Agent and each of the Lenders), unless the Administrative Agent, in its sole discretion, determines that the satisfaction of one or more of the following conditions precedent may be satisfied on a post-closing basis pursuant to the Post-Closing Agreement:

(a) Notes shall have been executed by the Borrowers and delivered to each Lender that requests issuance of a Note. Each other Loan Document shall have been duly executed and delivered to the Administrative Agent by each of the signatories thereto, and each Loan Party shall be in compliance with all terms thereof.

(b) The Administrative Agent shall be satisfied that the Security Documents shall be effective to create in favor of the Administrative Agent a legal, valid and enforceable security interest in and Lien upon the Collateral (subject only to the first priority security interest and Lien in favor of the Revolving Agent or the Canadian Agent) and shall have received (i) evidence that all filings, recordings, deliveries of instruments and other actions necessary or desirable in the commercially reasonable opinion of the Administrative Agent to protect and preserve such security interests shall have been duly effected, (ii) UCC, PPSA and Lien searches (and the equivalent thereof in all applicable foreign jurisdictions) and other evidence reasonably satisfactory to the Administrative Agent that such Liens are the only Liens upon the Collateral, except Permitted Liens, (iii) evidence that the payment (or evidence of provision for payment) of all filing and recording fees and taxes due and payable in respect thereof has been made in form and substance reasonably satisfactory to the Administrative Agent, (iv) all Lien Waivers and Lien Priority Agreements necessary or desirable in the reasonable opinion of the Administrative Agent, and (v) a completed and fully executed information certificate with respect to each Loan Party substantially in the form of **Exhibit C** hereto.

(c) The Administrative Agent shall have received executed copies of the Management Agreement, the Revolving Loan Documents, the Brinkhaus Debt Documents, the Quebec Subordinated Debt Documents, the Rhode Island Debt Documents, and the Rolex Documents, certified by a Senior Officer of the Borrowers as complete and correct (with such certification to be in such Person s capacity a Senior Officer of the Borrowers and not in such Person s individual capacity), and the Administrative Agent shall be satisfied with the terms and conditions and provisions thereof, which documents shall be in full force and effect and without amendment except attached thereto.

(d) The Administrative Agent shall have received duly executed Deposit Account Control Agreements with respect to each Deposit Account of the Borrowers constituting a Concentration Account or into which credit card receivables are deposited, each in form and substance, and with financial institutions, satisfactory to the Administrative Agent.

(e) The Administrative Agent shall have received a certificate, in form and substance reasonably satisfactory to it, from a Senior Officer of each Borrower (with such certification to be in such Person s capacity as a Senior Officer of such Borrower and not in such Person s individual capacity) certifying that:

(i) after giving effect to the Term Loan, the Revolving Loans, and transactions hereunder and under the Revolving Credit Agreement, (A) each Loan Party is Solvent; (B) no Default or Event of Default exists; (C) the representations and warranties set forth in **Section 9** are true and correct in all material respects; and (D) each Loan Party has complied in all material respects with all agreements and conditions to be satisfied by it under the Loan Documents;

(ii) there is no action, suit, investigation or proceeding pending or, to the knowledge of the Loan Parties, threatened in any court or before any arbitrator or governmental authority that could reasonably be expected to have a Material Adverse Effect;

(iii) the Term Loan made by the Lenders to the Borrowers hereunder is and shall remain in full compliance with the Federal Reserve s margin regulations and other similar Applicable Laws;

(iv) no law or regulation to which any Loan Party is subject is applicable to the transactions contemplated hereby which could reasonably be expected to have a Material Adverse Effect on any Loan Party or a Material Adverse Effect on the transactions contemplated hereby;

(v) no Material Adverse Effect shall have occurred since September 27, 2008; and

(vi) the transactions contemplated by the Revolving Loan Documents shall have been consummated contemporaneously with the effectiveness of this Agreement.

(f) The Administrative Agent shall have received a certificate of a duly authorized officer of each Loan Party (with such certification to be in such Person s capacity as an officer of such Loan Party and not in such Person s individual capacity), certifying (i) that attached copies of such Loan Party s Organizational Documents are true and complete, and in full force and effect, without amendment except as shown, (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility, and (iii) to the title, name and signature of each

Person authorized to sign the Loan Documents. The Administrative Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Loan Party in writing.

(g) Each of the Lenders and the Administrative Agent shall have received favorable legal opinions addressed to the Lenders and the Administrative Agent, dated as of the Closing Date, in form and substance reasonably satisfactory to the Lenders and the Administrative Agent, from (i) Holland & Knight LLP, US counsel to the Borrowers and their Subsidiaries; (ii) Stikeman Elliott LLP, Canadian counsel to the Borrowers and their Subsidiaries; (iii) Edwards Angell Palmer & Dodge LLP, local Rhode Island counsel to Henry Birks & Sons U.S., Inc.; and (iv) local Canadian counsel to the Borrowers and their Subsidiaries with respect to filing and perfection matters in the applicable provinces and territories of Canada.

(h) The Administrative Agent shall have received copies of the charter documents of each Loan Party, certified as appropriate by the Secretary of State or other appropriate official of such Loan Party s jurisdiction of organization. The Administrative Agent shall have received good standing or subsistence certificates, as applicable, for each Loan Party, issued by the Secretary of State or other appropriate official of such Loan Party s jurisdiction of organization, dated as of a recent date.

(i) The Administrative Agent shall (i) be reasonably satisfied with the amount, types and terms and conditions of all insurance maintained by the Loan Parties and their Subsidiaries, and (ii) have received certificates of insurance identifying insurers, types of insurance, insurance limits and policy terms and with endorsements naming the Administrative Agent, for the benefit of the Lenders, as lender s loss payee or additional insured, as applicable, with respect to each insurance policy required to be maintained with respect to the Collateral and otherwise in form and substance reasonably satisfactory to the Administrative Agent.

(j) The Administrative Agent shall have completed its business, financial and legal due diligence of the Loan Parties, with results reasonably satisfactory to the Administrative Agent, and the Administrative Agent shall be satisfied that no Material Adverse Effect shall have occurred since September 27, 2008.

(k) The Borrowers shall have paid all fees and expenses to be paid to the Administrative Agent and the Lenders on the Closing Date (including, without limitation, all fees, charges and disbursements of counsel, including local counsel, to the Administrative Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent)).

(l) The Borrowers shall have consummated the transactions contemplated by the Revolving Loan Documents (including any amendments thereof) and such documents shall be in full force and effect.

(m) The Administrative Agent shall have received duly executed copies of the Intercreditor Agreement and each Subordination Agreement (other than the Quebec Subordination Agreement), each of which shall be in form and substance satisfactory to the Administrative Agent and which shall be in full force and effect.

(n) The Administrative Agent shall have received all inventory and asset appraisals, commercial finance audits, field audits and such other reports, audits and other information or certifications with respect to the Collateral as required herein.

(o) The Administrative Agent shall have received a flow of funds, in form and substance satisfactory to the Administrative Agent.

(p) The Administrative Agent shall have received copies of agreements, instructing each credit card processor of the Loan Parties to transfer all amounts owing to a Loan Party by such credit card processor directly to the applicable Concentration Account, with (x) such agreements (each, a Credit Card Agreement) to be in form and substance acceptable to the Administrative Agent, and (y) such agreements to be executed by each relevant Loan Party and the relevant credit card processor, unless otherwise waived by the Administrative Agent.

(q) The Administrative Agent shall have received a Borrowing Base Certificate indicating that Aggregate Excess Availability as of the Closing Date, after giving effect to the transactions contemplated hereby (including the making of the Term Loan on the Closing Date) and by the Revolving Loan Documents, is not less than $20,000,000.

(r) The Administrative Agent shall have received a certificate of a duly authorized officer of each Loan Party (with such certification to be in such Person s capacity as an officer of such Loan Party and not in such Person s individual capacity), either (i) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (ii) stating that no such consents, licenses or approvals are so required.

(s) The Administrative Agent shall have received (i) the audited financial statements of the Borrowers for the Fiscal Year ended on March 29, 2008, (ii) the unaudited financial statements of the Borrowers for the Fiscal Quarter ended September 27, 2008 and (iii) forecasts prepared by management of the Borrowers of balance sheets, income statements and cash flow statements of the Borrowers on a monthly basis for the current Fiscal Year and for the Fiscal Year thereafter.

6.2. [Reserved].

6.3. Limited Waiver of Conditions Precedent. If the Administrative Agent or the Lenders fund the Term Loan when any conditions precedent are not satisfied (regardless of whether the lack of satisfaction was known or unknown at the time), it shall not operate as a waiver of any Default or Event of Default due to such failure of conditions or otherwise.

SECTION 7. COLLATERAL SECURITY AND GUARANTEES

7.1. Grant of Security Interest. To secure the prompt payment and performance of all Obligations, each Loan Party hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in and Lien upon all Property of such Loan Party, including all of the following Property, whether now owned or hereafter acquired, and wherever located:

(a) all Accounts;

(b) all Chattel Paper, including electronic chattel paper;

(c) all Commercial Tort Claims, including, without limitation, those Commercial Tort Claims identified on **Schedule 7.1** (as such Schedule may be updated by the Administrative Agent from time to time);

(d) all Deposit Accounts;

(e) all Documents;

(f) all General Intangibles, including Payment Intangibles, Software and Intellectual Property;

(g) all Goods, including Inventory, Equipment and Fixtures;

(h) all Instruments;

(i) all Investment Property;

(j) all Letter-of-Credit Rights;

(k) all Supporting Obligations;

(l) all monies, whether or not in the possession or under the control of the Administrative Agent, a Lender, or a bailee or Affiliate of the Administrative Agent or a Lender, including any Cash Collateral;

(m) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and

(n) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing.

7.2. Deposit Accounts; Cash Collateral; Credit Card Agreements.

7.2.1. **Bank Accounts**.

(a) To further secure the prompt payment and performance of all Obligations, each Loan Party hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in and Lien upon all of such Loan Party s right, title and interest in and to each Deposit Account of such Loan Party and any deposits or other sums at any time credited to any such Deposit Account, including any sums in any blocked or lockbox accounts or in any accounts into which such sums are swept. Upon the occurrence and during the continuance of an Event of Default, each Loan Party authorizes and directs each bank or other depository to deliver to the Administrative Agent, on a daily basis, all balances in each Deposit Account (other than an Exempt Deposit Account) maintained by such Loan Party with such depository for application to the Obligations in accordance with **Section 5.5**. Each Loan Party irrevocably appoints the Administrative Agent as such Loan Party s attorney-in-fact to collect such balances to the extent any such delivery is not so made.

(b) **Schedule 7.2.1** sets forth the account numbers and locations of all Deposit Accounts (and related lockbox arrangements) of each Loan Party as of the Closing Date. Each Loan Party shall be the sole account holder of each Deposit Account and shall not allow any other Person (other than the Administrative Agent and, subject to the Intercreditor Agreement, the Revolving

Agent or the Canadian Revolving Agent) to have control over a Deposit Account. Contemporaneously with the delivery of quarterly financial statements, each Loan Party shall notify the Administrative Agent of any opening or closing of a Deposit Account since the last such report (or, in the case of the first such report, since the Closing Date) and will provide an updated **Schedule 7.2.1** to reflect same.

(c) Each Concentration Account, each Dominion Account, and each other Deposit Account into which Accounts from credit card processors are deposited, and, following the occurrence and during the continuance of an Event of Default, at the request of the Administrative Agent, any other Deposit Account (other than Exempt Deposit Accounts) shall be subject to control arrangements or lockbox or other arrangements reasonably acceptable to the Administrative Agent. Neither the Administrative Agent nor the Lenders assume any responsibility to any Loan Party for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

(d) No Loan Party shall, or shall cause or permit any Subsidiary to accumulate or maintain cash in a disbursement account or payroll account, as of any date of determination, in excess of checks outstanding against such account as of that date and amount necessary to meet minimum balance requirements.

7.2.2. **Cash Collateral.** Any Cash Collateral may be invested, in the Administrative Agent s discretion, in Cash Equivalents, but the Administrative Agent shall not have any duty to do so, regardless of any agreement, understanding or course of dealing with any Loan Party, and shall have no responsibility for any investment or loss. Each Loan Party hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest in and Lien upon all Cash Collateral held from time to time and all proceeds thereof, as security for the Obligations, whether such Cash Collateral is held in the Cash Collateral Account or elsewhere. The Administrative Agent may apply Cash Collateral to the payment of any Obligations in accordance with **Section 5.5**. Upon the occurrence and during the continuance of an Event of Default, the Cash Collateral Account and all Cash Collateral shall be under the sole dominion and control of the Administrative Agent. No Loan Party or other Person claiming through or on behalf of any Loan Party shall have any right to any Cash Collateral, until Full Payment of all Obligations.

7.2.3. **Credit Card Arrangements. Schedule 7.2.3** sets forth all arrangements to which any Loan Party is a party as of the Closing Date with respect to the payment to any Loan Party of the proceeds of credit card charges for sales by such Loan Party. The Loan Parties shall deliver to the Administrative Agent Credit Card Agreements instructing each of their credit card processors to transfer all amounts owing by such processor to a Loan Party directly to the applicable Concentration Account, with such Credit Card Agreements to be executed by each relevant Loan Party and the applicable credit card processor. Contemporaneously with the delivery of quarterly financial statements, each Loan Party shall provide an updated **Schedule 7.2.3** to reflect any additional credit card arrangements to which any Borrower or any Subsidiary is from time to time a party and shall deliver a Credit Card Agreement to the Administrative Agent upon entry into such additional credit card arrangements.

7.3. Lien on Real Estate.

7.3.1. **Lien on Real Estate.** The Obligations shall also be secured by Mortgages upon all Real Estate owned by the Loan Parties (if any). The Mortgages shall be duly recorded, at the Borrowers expense, in each office where such recording is required to constitute a fully perfected Lien on the Real Estate covered thereby. If any Loan Party acquires Real Estate hereafter, the Borrowers

shall, within 30 days, execute, deliver and record a Mortgage sufficient to create a Lien in favor of the Administrative Agent (subject only to the first priority Lien in favor of the Revolving Agent or the Canadian Agent) on such Real Estate, and shall deliver all Related Real Estate Documents.

7.3.2. **Collateral Assignment of Leases.** To further secure the prompt payment and performance of all Obligations, each Loan Party hereby collaterally transfers and assigns to the Administrative Agent, for the benefit of the Secured Parties, all of such Loan Party s right, title and interest in, to and under all now or hereafter existing leases of real Property to which such Loan Party is a party, whether as lessor or lessee, and all extensions, renewals and modifications thereof.

7.4. Other Collateral.

7.4.1. **Commercial Tort Claims.** The Borrowers shall promptly notify the Administrative Agent in writing if any Loan Party has a Commercial Tort Claim and, upon the Administrative Agent s request, shall promptly execute such documents and take such actions as the Administrative Agent deems appropriate to confer upon the Administrative Agent (for the benefit of the Secured Parties) a duly perfected Lien upon such claim (subject only to the first priority Lien of the Revolving Agent or the Canadian Revolving Agent, as applicable).

7.4.2. **Certain After-Acquired Collateral.** The Borrowers shall promptly notify the Administrative Agent in writing if, after the Closing Date, any Loan Party obtains any interest in any Collateral consisting of Deposit Accounts, Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights and, upon the Administrative Agent s request, shall promptly execute such documents and take such actions as the Administrative Agent deems appropriate to effect the Administrative Agent s duly perfected Lien upon such Collateral (subject only to the Lien of the Revolving Agent or the Canadian Revolving Agent, as applicable), including obtaining any appropriate possession, control agreement, Lien Waiver or Lien Priority Agreement. If any Collateral is in the possession of a third party, at the Administrative Agent s request, the applicable Loan Party shall obtain an acknowledgment that such third party holds the Collateral for the benefit of the Administrative Agent.

7.5. No Assumption of Liability. The Lien on Collateral granted hereunder is given as security only and shall not subject the Administrative Agent or any Secured Party to, or in any way modify, any obligation or liability of the Loan Parties relating to any Collateral.

7.6. Further Assurances. Promptly upon request, the Loan Parties shall deliver such instruments, assignments, title certificates, or other documents or agreements, and shall take such actions, as the Administrative Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Loan Party authorizes the Administrative Agent to file any financing statement that indicates the Collateral as all assets or all personal property of such Loan Party, or words to similar effect, and ratifies any action taken by the Administrative Agent before the Closing Date to effect or perfect its Lien on any Collateral.

7.7. Guarantees by the Borrowers.

7.7.1. **Guarantees.** For value received and hereby acknowledged and as an inducement to the Lenders and the Administrative Agent to make the Term Loan, each Borrower hereby unconditionally and irrevocably guarantees (i) the full punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Obligations of each other Loan Party now or hereafter existing whether for principal, interest, fees, expenses or otherwise, and (ii) the strict performance and observance by each other Loan Party of all agreements, warranties and covenants applicable to such other Loan Party in this

Agreement and the other Loan Documents and (iii) the obligations of each other Loan Party under this Agreement and the other Loan Documents (such Obligations collectively being hereafter referred to as the " Guaranteed Obligations ").

7.7.2. **Guarantees Absolute.** Each Borrower guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms hereof, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Lenders with respect thereto. The liability of each Borrower under its respective guaranty of the Guaranteed Obligations shall be absolute and unconditional irrespective of:

(a) any Loan Party s lack of authorization, execution, validity or enforceability of this Agreement or any other Loan Document and any amendment hereof (with regard to such Guaranteed Obligations), or any other obligation, agreement or instrument relating thereto (it being agreed by each Borrower that its Guaranteed Obligations shall not be discharged prior to Full Payment of all of the Obligations) or any failure to obtain any necessary governmental consent or approvals or necessary third party consents or approvals;

(b) the Administrative Agent s or any Lender s exercise or enforcement of, or failure or delay in exercising or enforcing, legal proceedings to collect the Obligations or the Guaranteed Obligations or any power, right or remedy with respect to any of the Obligations or the Guaranteed Obligations, including (i) any suspension of the Administrative Agent s or any Lender s right to enforce any Borrower s Guaranteed Obligations, or (ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other amendment or waiver of or any consent to departure from this Agreement or the other Loan Documents (with regard to such Guaranteed Obligations) or any other agreement or instrument governing or evidencing any of the Guaranteed Obligations;

(c) any exchange, release, unenforceability, non-opposability or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(d) any change in ownership of any Loan Party;

(e) any acceptance of any partial payment(s) from any Loan Party;

(f) any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, assignment for the benefit of creditors, appointment of a receiver, interim receiver, receiver and manager, monitor or trustee for all or any part of any Loan Party s assets;

(g) any assignment, participation or other transfer or reallocation, in whole or in part, of the Administrative Agent s or any Lender s interest in and rights under this Agreement or any other Loan Document, or of the Administrative Agent s or any Lender s interest in the Obligations or the Guaranteed Obligations;

(h) any cancellation, renunciation or surrender of any pledge, guaranty or any debt instrument evidencing the Obligations or the Guaranteed Obligations;

(i) the Administrative Agent s or any Lender s vote, claim, distribution, election, acceptance, action or inaction in any proceeding under any Insolvency Proceeding related to the Obligations or the Guaranteed Obligations; or

(j) any other action or circumstance, other than payment, which might otherwise constitute a defense available to, or a discharge of, any Borrower in respect of its Guaranteed Obligations (other than the defense of payment in full).

The guarantees contained in this **Section 7.7** shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any Guaranteed Obligation is rescinded or must otherwise be returned by the Administrative Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Loan Party or otherwise, all as though such payment had not been made.

7.7.3. **Effectiveness; Enforcement.** The guarantee of each Borrower hereunder shall be effective and shall be deemed to be made with respect to the Term Loan and the other Obligations. No invalidity, irregularity or unenforceability by reason of any Insolvency Proceeding, or any law or order of any government or agency thereof purporting to reduce, amend or otherwise affect any liability of any Loan Party, and no defect in or insufficiency or want of powers of any Loan Party or irregular or improperly recorded exercise thereof, shall impair, affect, be a defense to or claim against either guarantee. Each guarantee hereunder is a continuing guarantee and shall (a) survive any termination of this Agreement, and (b) remain in full force and effect until Full Payment of the Obligations to which such guarantee relates. The guarantee of each Borrower under this Agreement is made for the benefit of the Administrative Agent and the Lenders and their successors and assigns, and may be enforced from time to time as often as occasion therefor may arise and without requirement on the part of the Administrative Agent or the Lenders first to exercise any rights against any other Loan Party, or to resort to any other source or means of obtaining payment of any of the Guaranteed Obligations or to elect any other remedy.

7.7.4. **Waiver.** Each Borrower hereby renounces to the benefits of division and discussion with respect to their respective guarantees. Each Borrower hereby waives promptness, diligence, protest, notice of protest, all suretyship defenses, notice of acceptance and any other notice with respect to any of its Guaranteed Obligations and its guarantee and any requirement that the Administrative Agent or any Lender secure, render enforceable or opposable, perfect or protect any security interest or Lien on any property subject thereto or exhaust any right or take any action against any other Loan Party or any other Person or any Collateral. Each Borrower also irrevocably waives, to the fullest extent permitted by Applicable Law, all defenses which at any time may be available to it in respect of its Guaranteed Obligations by virtue of any statute of limitations, valuation, stay, moratorium law or similar law now or hereinafter in effect.

7.7.5. **Subordination; Subrogation.** Until the Full Payment of all of the Obligations, each Borrower agrees not to exercise, and each Borrower hereby waives, any rights against any other Loan Party as a result of payment by such Borrower hereunder, by way of subrogation, reimbursement, restitution, contribution or otherwise, and such Borrower will not prove any claim in competition with the Administrative Agent or any Lender in respect of any payment hereunder in any proceedings of any nature in any Insolvency Proceeding; no Borrower will claim any set-off, recoupment or counterclaim against any other Loan Party in respect of any liability of a Loan Party to any other Loan Party; and each Borrower waives any benefit of and any right to participate in any Collateral which may be held by any Secured Party. Each Borrower agrees that, after the occurrence and during the continuance of any Default or Event of Default, such Borrower will not demand, sue for or otherwise attempt to collect any Debt of any other Loan Party to such Borrower until Full Payment of all of the Obligations. If, notwithstanding the foregoing sentence, any Borrower shall collect, enforce or receive any amounts in respect of the Debt of any other Loan Party in violation of the foregoing sentence while any Obligations of such other Loan Party are still outstanding or while any

Commitments are outstanding, such amounts shall be collected, enforced and received by such Borrower as trustee for the Administrative Agent and the Lenders and be paid over to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders on account of the Obligations of such Borrower without affecting in any manner the liability of such Borrower under the other provisions hereof. The provisions of this section shall survive the expiration or termination of this Agreement and the other Loan Documents.

7.7.6. **Payments.** Each Borrower agrees to pay its Guaranteed Obligations in the currency in which such Obligation is payable by the other Loan Parties and all payments by such Borrower hereunder shall be made without setoff or counterclaim and shall be free and clear of and without deduction for any foreign or domestic Taxes, compulsory loans, restrictions or conditions of any nature now or hereafter imposed or levied by any jurisdiction or any political subdivision thereof or taxing or other authority therein unless such Borrower is required by Applicable Law to make such deduction or withholding.

7.7.7. **Receipt of Information.** Each Borrower acknowledges and confirms that it itself has established its own adequate means of obtaining from the other Loan Parties on a continuing basis all information desired by such Borrower concerning the financial condition of the other Loan Parties and that such Borrower will look to the other Loan Parties and not to the Administrative Agent or any Lender in order to keep adequately informed of changes in the such other Loan Parties financial condition.

7.8. Guarantees by the Subsidiaries. The Obligations shall also be guaranteed pursuant to the terms of each other Guaranty. The obligations of the Guarantors under each Guaranty are in turn secured by a perfected security interest in and Lien upon (subject only to (i) the first priority security interest and Lien in favor of the Revolving Agent or the Canadian Agent, and (ii) Permitted Liens entitled to priority under Applicable Law) all of the assets of each such Guarantor, whether now owned or hereafter acquired, pursuant to the terms of this Agreement and the Security Documents to which such Guarantor is a party.

7.9. Intercompany Debt Subordination Arrangements. Each Loan Party agrees that, after the occurrence and during the continuance of any Default or Event of Default, such Loan Party will not demand, sue for or otherwise attempt to collect any Debt of the other Loan Party owing to such Loan Party until Full Payment of the Obligations. If, notwithstanding the foregoing sentence, any Loan Party shall collect, enforce or receive any amounts in respect of the Debt of the other Loan Party in violation of the foregoing sentence prior to the Full Payment of the Obligations, such amounts shall be collected, enforced and received by such Loan Party as trustee for the Lenders and the Administrative Agent and be paid over to the Administrative Agent, for the benefit of the Lenders and the Administrative Agent on account of the Obligations of the Loan Parties without affecting in any manner the liability of the Loan Parties under the other provisions hereof or of any other Loan Document. In addition, until the Full Payment of the Obligations, each Loan Party agrees not to exercise, and each Loan Party hereby waives, any rights against any other Loan Party as a result of payment by such Loan Party hereunder, by way of subrogation, reimbursement, restitution, contribution or otherwise, and such Loan Party will not prove any claim in competition with the Administrative Agent or any Lender in respect of any payment hereunder in any proceedings of any nature in any Insolvency Proceeding; no Loan Party will claim any set-off, recoupment or counterclaim against the other Loan Party in respect of any liability of one Loan Party to the other Loan Party; and each Loan Party waives any benefit of and any right to participate in any Collateral which may be held by any Secured Party. The provisions of this **Section 7.9** shall survive the expiration or termination of this Agreement and the other Loan Documents.

SECTION 8. COLLATERAL ADMINISTRATION

8.1. Borrowing Base Certificates. Each Borrower shall deliver to the Administrative Agent (and the Administrative Agent shall promptly deliver same to the Lenders), on each Business Day, a Borrowing Base Certificate setting forth, among other things, the Term Loan Borrowing Capacity and the Revolving Borrowing Capacity as at the immediately preceding Business Day; provided that the Borrowers shall only be required to report Eligible Inventory, Eligible Major Credit Card Receivables, and Eligible Private Label and Corporate Accounts (collectively, the Borrowing Base Collateral) weekly, such reporting to be updated not later than Wednesday of each week, and reflecting such Borrowing Base Collateral as at the end of the week most recently ended. All calculations of Aggregate Excess Availability shall originally be made by the Borrowers and certified by a Senior Officer (with such certification to be in such Person s capacity as a Senior Officer of a Loan Party and not in such Person s individual capacity); provided that until the Full Payment (as defined in the Revolving Credit Agreement) of the Revolving Loan Debt and the termination of the Commitments (as defined in the Revolving Credit Agreement), the Revolving Agent (subject to the limitations contained in the Intercreditor Agreement) may from time to time review and adjust (and thereafter, the Administrative Agent may review and adjust) any such calculation (a) to reflect its reasonable estimate of declines in value of any Collateral included in any of the Term Loan Borrowing Capacity due to collections received in the Concentration Accounts or to reflect any events or circumstances affecting such Collateral; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting Collateral included in any of the Term Loan Borrowing Capacity; and (c) to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Availability Reserves. Each Borrowing Base Certificate delivered by the Borrowers shall be accompanied by a certificate, in form and substance satisfactory to the Administrative Agent and certified by a Senior Officer, as to the balances of each Deposit Account.

8.2. Account Verification. Whether or not a Default or Event of Default exists, the Administrative Agent shall have the right at any time, in the name of the Administrative Agent, any designee of the Administrative Agent or any Loan Party to verify the validity, amount or any other matter relating to any Accounts of the Loan Parties by mail, telephone or otherwise. The Loan Parties shall cooperate fully with the Administrative Agent in an effort to facilitate and promptly conclude any such verification process.

8.3. Administration of Inventory.

8.3.1. **Records and Reports of Inventory.** Each Loan Party shall keep accurate and complete records of its Inventory and the Borrowers shall submit to the Administrative Agent inventory reports as provided in **Section 10.1.1**. Each Borrower, Birks US and Mayor s Florida shall conduct periodic cycle counts covering the entire Inventory at least once per calendar year (and on a more frequent basis if requested by the Administrative Agent when an Event of Default exists) consistent with historical practices, and shall provide to the Administrative Agent a report based on each such inventory and count promptly upon completion thereof, together with such supporting information as the Administrative Agent may reasonably request. The Administrative Agent may participate in and observe each inventory or physical count.

8.3.2. **Returns of Inventory.** No Loan Party shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business or (b) no Event of Default exists or would result therefrom.

8.3.3. **Acquisition, Sale and Maintenance.** No Loan Party shall acquire or accept any Inventory which is part of the Term Loan Borrowing Capacity on consignment or approval. Other than as set forth in **Schedule 8.3.3**, no Loan Party shall sell any

Inventory on consignment or approval in which such Loan Party acts as consignor unless otherwise expressly permitted by the Administrative Agent in its sole discretion. The Loan Parties shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all Applicable Law, and shall make current rent payments (within applicable grace periods provided for in leases) at all locations where Collateral is located, stored, used or held.

8.4. [Reserved].

8.5. General Provisions.

8.5.1. **Location of Collateral.** All tangible items of Collateral (other than Inventory in transit, Inventory located on the premises of a processor who executed a Lien Waiver in favor of the Administrative Agent, and certificated securities in the possession of (i) the Administrative Agent, or (ii) the Revolving Agent or the Canadian Revolving Agent, as agent for the Administrative Agent in accordance with the terms of the Intercreditor Agreement), shall at all times be kept by the Loan Parties at the business locations set forth in **Schedule 8.5.1**, except that the Loan Parties may move Collateral to another location in the United States (or, with respect to Collateral owned by the Canadian Borrower, Canada), so long as, if such Collateral has an aggregate value of more than the Dollar Equivalent of $500,000, the Borrower Agent has (i) provided the Administrative Agent with 30 Business Days prior written notice thereof, and (ii) other than with respect to Collateral in which the Lien in favor of the Administrative Agent may be perfected solely by filing with the Secretary of State (or similar Governmental Authority) of the applicable Loan Party s jurisdiction of organization or other applicable jurisdiction as required by Applicable Law and has been so perfected, delivered to the Administrative Agent evidence that all filings, recordings and registrations that are necessary or desirable to perfect the Lien in favor of the Administrative Agent, for the benefit of the Secured Parties, have been made (it is acknowledged that so long as all filings, recordings and registrations made against the US Loan Parties that are necessary or desirable to perfect the security interest in favor of the Applicable Agent on record as of the Closing Date remain on record, no additional filings with the Secretary of State of the State of Incorporation of each such US Loan Party shall be required hereunder). Contemporaneously with the delivery of quarterly financial statements, each Loan Party shall provide the Administrative Agent with an updated **Schedule 8.5.1** to reflect the locations of all tangible items of Collateral, other than Inventory in transit and certificated securities, which updated **Schedule 8.5.1** shall clearly indicate which locations are new since the last delivery of an updated **Schedule 8.5.1**. The chief executive offices and other places of business of each Loan Party and Subsidiary as of the Closing Date are shown on **Schedule 8.5.1**. In the event of any change in the chief executive offices and other places of business of any Loan Party or any Subsidiary, the Borrowers shall deliver to the Administrative Agent an updated **Schedule 8.5.1.**

8.5.2. **Insurance of Collateral; Condemnation Proceeds.**

(a) Each Loan Party shall maintain insurance with respect to the Collateral, covering casualty, hazard, public liability, theft, malicious mischief, and such other risks, in such amounts, with such endorsements, and with such insurers (rated A or better by A.M. Best Rating Guide) as are reasonably satisfactory to the Administrative Agent. All proceeds of Collateral under each policy shall be payable to the Administrative Agent. From time to time upon request, the Loan Parties shall deliver to the Administrative Agent the originals or certified copies of their insurance policies and updated flood plain searches. As soon as practicable and in any event by the last day of each Fiscal Year, the Loan Parties shall deliver to the Administrative Agent a report in form and substance reasonably satisfactory to the Administrative Agent outlining all material insurance coverage maintained as of the date of such report by the Loan Parties and all material insurance coverage planned to be maintained by the Loan Parties in the immediately succeeding Fiscal Year.

Unless the Administrative Agent shall agree otherwise, each policy shall include reasonably satisfactory endorsements (i) showing the Administrative Agent as loss payee or additional insured, as appropriate; (ii) requiring 30 days prior written notice to the Administrative Agent in the event of cancellation of the policy for any reason whatsoever; and (iii) specifying that the interest of the Administrative Agent shall not be impaired or invalidated by any act or neglect of any Loan Party or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. If any Loan Party fails to provide and pay for such insurance, the Administrative Agent may, at its option, but shall not be required to, procure the insurance and charge the Loan Parties therefor. Each Loan Party agrees to deliver to the Administrative Agent, promptly as rendered, copies of all reports made to insurance companies. While no Event of Default exists, the Loan Parties may settle, adjust or compromise any insurance claim, as long as the proceeds are delivered to the Administrative Agent. If an Event of Default exists, only the Administrative Agent shall be authorized to settle, adjust and compromise such claims. Without limiting the foregoing, the Loan Parties will (a) keep all of their physical property (and the property of their Subsidiaries) insured with casualty or physical hazard insurance on an all risks basis, with broad form flood and, to the extent consistent with prudent business practice for the location in which such property is situated, earthquake coverages and electronic data processing coverage, with a full replacement cost endorsement and an agreed amount clause in an amount equal to 100% of the full replacement cost of such property, (b) maintain all such workers compensation or similar insurance as may be required by Applicable Law and (c) maintain, in amounts and with deductibles equal to those generally maintained by businesses engaged in similar activities in similar geographic areas, general public or civil liability insurance against claims of bodily injury, death or property damage occurring, on, in or about the properties of the Loan Parties and their Subsidiaries; business interruption insurance; and product liability insurance.

(b) Any proceeds of insurance (other than proceeds from workers compensation or D&O insurance) and any awards arising from condemnation or expropriation of any Collateral shall be paid to the Administrative Agent.

8.5.3. **Protection of Collateral.** All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes (other than Excluded Taxes) payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by the Administrative Agent to any Person to realize upon any Collateral, shall be borne and paid by the Loan Parties. The Administrative Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in the Administrative Agent s actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at the Loan Parties sole risk.

8.5.4. **Defense of Title to Collateral.** Each Loan Party shall at all times defend its title to Collateral and the Administrative Agent s Liens therein against all Persons, claims and demands whatsoever, except Permitted Liens.

8.6. Power of Attorney. Each Loan Party hereby irrevocably constitutes and appoints the Administrative Agent (and all Persons designated by the Administrative Agent) as such Loan Party s true and lawful attorney (and agent-in-fact) for the purposes provided in this **Section 8.6**. The Administrative Agent, or the Administrative Agent s designee, may, without notice and in either its or a Loan Party s name, but at the cost and expense of the Loan Parties:

(a) Endorse a Loan Party s name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into the Administrative Agent s possession or control; and

(b) During an Event of Default, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts, by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as the Administrative Agent deems advisable; (iv) take control, in any manner, of any proceeds of Collateral; (v) prepare, file and sign a Loan Party s name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to a Loan Party, and notify postal authorities to change the address for delivery thereof to such address as the Administrative Agent may designate; (vii) endorse any Chattel Paper, Document, Instrument, invoice, freight bill, bill of lading, or similar document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use a Loan Party s stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use the information recorded on or contained in any data processing equipment and computer hardware and software relating to any Collateral; (x) make and adjust claims under policies of insurance; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit or banker s acceptance for which a Loan Party is a beneficiary; and (xii) take all other actions as the Administrative Agent deems appropriate to fulfill any Loan Party s obligations under the Loan Documents.

SECTION 9. REPRESENTATIONS AND WARRANTIES

9.1. General Representations and Warranties. To induce the Administrative Agent and the Lenders to enter into this Agreement and to make available the Term Loan, each Loan Party represents and warrants that:

9.1.1. **Organization and Qualification.** Each Loan Party and Subsidiary is duly organized, validly existing and in good standing or subsisting, as applicable under the laws of the jurisdiction of its organization. Each Loan Party and Subsidiary is duly qualified, authorized to do business and in good standing as a foreign corporation in each jurisdiction where failure to be so qualified could reasonably be expected to have a Material Adverse Effect.

9.1.2. **Power and Authority.** Each Loan Party is duly authorized to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, and to execute, deliver and perform the Loan Documents to which it is a party. The execution, delivery and performance of the Loan Documents by each Loan Party have been duly authorized by all necessary action, and do not (a) require any consent or approval of any holders of Capital Stock of any Loan Party, other than those already obtained; (b) contravene the Organizational Documents of any Loan Party; (c) violate or cause a material default under any Applicable Law or Material Contract; or (d) result in or require the imposition of any Lien (other than Permitted Liens and Liens granted hereunder) on any Property of any Loan Party.

9.1.3. **Enforceability.** Each Loan Document is a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each Loan Party in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors rights generally and by general equitable principles.

9.1.4. **Capital Structure. Schedule 9.1.4** shows, for each Loan Party and Subsidiary as of the Closing Date, its name, its jurisdiction of organization, its authorized and issued Capital Stock, the holders of its Capital Stock, whether such entity is a Loan Party and all agreements binding on such holders with respect to their Capital Stock. Each Loan Party has good title in its interest in the Capital Stock of its Subsidiaries, subject only to the Administrative Agent s Liens and Liens in favor of the Revolving Agent or

the Canadian Revolving Agent, and all such Capital Stock is duly issued, fully paid and non-assessable. Except as set forth in **Schedule 9.1.4**, there are no outstanding options to purchase, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to any Capital Stock of any Loan Party or any Subsidiary. Each Subsidiary of a Borrower (other than the Non-Material Subsidiaries) is a Guarantor.

9.1.5. **Corporate Names; Locations.** During the five years preceding the Closing Date, except as shown on **Schedule 9.1.5**, no Loan Party or Subsidiary has been known as or used any corporate, fictitious or trade names, has been the surviving corporation of a merger, amalgamation or combination, or has acquired any substantial part of the assets of any Person.

9.1.6. **Title to Properties; Priority of Liens; Investments.** (a) Each Loan Party and Subsidiary has good and marketable title to (or valid leasehold interests in) all of its Real Estate, and good title to all of its personal Property, including all Property reflected in any financial statements delivered to the Administrative Agent or the Lenders, in each case free of Liens except Permitted Liens. Each Loan Party and Subsidiary has paid and discharged all lawful claims that, if unpaid, could become a Lien on its Properties, other than Permitted Liens and except for such claims as are being Properly Contested. All Liens of the Administrative Agent on the Collateral are duly perfected Liens, subject only to Permitted Liens that are expressly allowed to have priority over the Administrative Agent s Liens. As of the Closing Date, **Schedule 9.1.6(a)** contains a true, accurate and complete list of each Loan Party s Real Estate assets, including all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting such Real Estate assets. The Borrowers do not have knowledge of any default that has occurred and is continuing under any agreement listed on **Schedule 9.1.6(a)** (except where the consequences, direct or indirect, of such default, if any, could not reasonably be expected to have a Material Adverse Effect), and each such agreement constitutes the legally valid and binding obligation of each applicable Loan Party, enforceable against such Loan Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors rights generally or by equitable principles.

(b) **Schedule 9.1.6(b)** sets forth a complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party on the date hereof, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.

9.1.7. **Security Documents.** The provisions of the Security Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable Lien (subject only to (i) Liens in favor of the Revolving Agent or the Canadian Revolving Agent, and (ii) Permitted Liens entitled to priority under Applicable Law) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed on or prior to the Closing Date and as contemplated hereby and by the Security Documents, no filing or other action will be necessary to perfect or protect such Liens.

9.1.8. **Financial Statements.** The consolidated and, if applicable, combined balance sheets, and related statements of income, cash flow and shareholder s equity, of the Loan Parties and Subsidiaries that have been and are hereafter delivered to the Administrative Agent and the Lenders, pursuant to **Sections 6.1** and **10.1.2** or otherwise, are prepared in accordance with GAAP and fairly present the financial positions and results of operations of the Loan Parties and Subsidiaries at the dates and for the periods indicated, subject, in the case of interim statements, to normal year-end adjustments and the absence of footnotes. All projections delivered from time to time to the Administrative Agent and the Lenders have been prepared in good faith, based on reasonable assumptions in light of the circumstances at such time. Since September 27, 2008 there has been no change in the condition, financial

or otherwise, of any Loan Party or any Subsidiary that could reasonably be expected to have a Material Adverse Effect. Each Loan Party and Subsidiary is Solvent. As of the Closing Date and except for obligations set forth on **Schedule 9.1.8** or as otherwise disclosed to the Administrative Agent, neither the Loan Parties nor any of their respective Subsidiaries have any contingent liability or liability for Taxes, long-term lease or unusual forward or long-term commitment that is not reflected in financial statements referred to in this **Section 9.1.8** or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, or condition (financial or otherwise) of the Loan Parties and their Subsidiaries taken as a whole.

9.1.9. **Surety Obligations.** No Loan Party or Subsidiary is obligated as surety or indemnitor under any bond or other contract that assures payment or performance of any obligation of any Person, except as permitted hereunder.

9.1.10. **Taxes.** Each Loan Party and Subsidiary has filed all federal, state, provincial, local and foreign tax returns and other reports that it is required by law to file, and has paid, or made provision for the payment of, all Taxes upon it, its income and its Properties that are due and payable, except to the extent being Properly Contested. The provision for Taxes on the books of each Loan Party and Subsidiary is adequate for all years not closed by applicable statutes, and for its current Fiscal Year.

9.1.11. **Brokers.** There are no brokerage commissions, finder s fees or investment banking fees payable in connection with any transactions contemplated by the Loan Documents.

9.1.12. **Intellectual Property.** Each Loan Party and Subsidiary owns or has the lawful right to use all Intellectual Property necessary for the conduct of its business, without conflict with any rights of others. There is no pending or, to any Loan Party s knowledge, threatened material Intellectual Property Claim with respect to any Loan Party, any Subsidiary or any of their Property (including any Intellectual Property). All Intellectual Property owned by any Loan Party or any Subsidiary and registered with the U.S. Patent and Trademark Office, the Canadian Intellectual Property Office or any other applicable Governmental Authority is identified on **Schedule 9.1.12**.

9.1.13. **Governmental Approvals; Other Consents.** Each Loan Party and Subsidiary has, is in compliance with, and is in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease and operate its Properties, except to the extent compliance with such Governmental Approvals could not reasonably be expected to result in a Material Adverse Effect. All necessary material import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and the Loan Parties and Subsidiaries have complied with all applicable foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a Material Adverse Effect. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the transactions contemplated hereby, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Security Documents, (c) the perfection or maintenance of the Liens created under the Security Documents, other than UCC and PPSA filings that will be made on or prior to the Closing Date or on such future date as may be necessary to maintain such perfection, or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Security Documents.

9.1.14. **Compliance with Laws.** Each Loan Party and Subsidiary has duly complied, and its Properties and business operations are in compliance with all Applicable Law, except where noncompliance could not reasonably be expected to have a Material Adverse Effect. There have been no citations, notices or orders of noncompliance issued to any Loan Party or any Subsidiary under any Applicable Law, the receipt of which could reasonably be expected to have a Material Adverse Effect.

9.1.15. **Compliance with Environmental Laws.** Except as disclosed on **Schedule 9.1.15** and except to the extent any of the following could not reasonably be expected to result in a Material Adverse Effect, no Loan Party s or Subsidiary s past or present operations, Real Estate or other Properties are subject to any federal, state, provincial or local investigation to determine whether any remedial action is needed to address any environmental pollution, hazardous material or environmental clean-up. No Loan Party or Subsidiary has received any Environmental Notice the receipt of which could reasonably be expected to result in a Material Adverse Effect. No Loan Party or Subsidiary has any material contingent liability with respect to any Environmental Release, environmental pollution or hazardous material on any Real Estate now or previously owned, leased or operated by it in any case that could reasonably be expected to result in a Material Adverse Effect.

9.1.16. **Burdensome Contracts.** No Loan Party or Subsidiary is a party or subject to any contract, agreement or charter restriction that could reasonably be expected to have a Material Adverse Effect. No Loan Party or Subsidiary is party or subject to any contract, agreement or charter restriction which prohibits the execution or delivery of any Loan Documents by a Loan Party or the performance by a Loan Party of any obligations thereunder, except as shown on **Schedule 9.1.16**.

9.1.17. **Litigation.** Except as shown on **Schedule 9.1.17**, there are no proceedings or investigations pending or, to any Loan Party s knowledge, threatened against any Loan Party or any Subsidiary, or any of their businesses, operations, Properties, or conditions, that (a) relate to any Loan Documents or transactions contemplated thereby; or (b) could reasonably be expected to have a Material Adverse Effect. No Loan Party or Subsidiary is in default with respect to any order, injunction or judgment of any Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

9.1.18. **Insurance; No Casualty.** The properties of each Loan Party and its Subsidiaries are insured with financially sound and reputable insurance companies that are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Party or the applicable Subsidiary operates. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

9.1.19. **No Defaults; Material Contracts.** No event or circumstance has occurred or exists as of the date of this Agreement that constitutes a Default or Event of Default. **Schedule 9.1.19** contains a true, correct and complete list of all Material Contracts, and except as described thereon, all such Material Contracts are in full force and effect. No Loan Party or Subsidiary is in default, and no event or circumstance has occurred or exists that with the passage of time or giving of notice would constitute a default, under any Material Contract or in the payment of borrowed money. There is no basis upon which any party (other than a Loan Party or the Subsidiary) could terminate a Material Contract prior to its scheduled termination date.

9.1.20. **Employee Benefit Plans; Canadian Plans.**

(a) Each Employee Benefit Plan and each Guaranteed Pension Plan has been maintained and operated in compliance in all material respects with the provisions of ERISA and all Applicable Pension Legislation and, to the extent applicable, the Code, including but not limited to the provisions thereunder respecting prohibited transactions and the bonding of fiduciaries and other persons handling plan funds as required by §412 of ERISA. The Borrowers have heretofore delivered to the Administrative Agent the most recently completed annual report, Form 5500, with all required attachments, and actuarial statement required to be submitted under §103(d) of ERISA, with respect to each Guaranteed Pension Plan.

(b) No Employee Benefit Plan, which is an employee welfare benefit plan within the meaning of §3(1) or §3(2)(B) of ERISA, provides benefit coverage subsequent to termination of employment, except as required by Title I, Part 6 of ERISA or the applicable state insurance laws. The Borrowers may terminate each such Employee Benefit Plan at any time (or at any time subsequent to the expiration of any applicable bargaining agreement) in the discretion of the Borrowers without liability to any Person other than for claims arising prior to termination.

(c) Each contribution required to be made to a Guaranteed Pension Plan under the Pension Funding Rules, has been timely made. No waiver of the minimum funding standards or extension of amortization periods under the Pension Funding Rules has been received with respect to any Guaranteed Pension Plan, and neither the Borrowers nor any ERISA Affiliate is obligated to or has posted security in connection with an amendment to a Guaranteed Pension Plan pursuant to §436 of the Code or, prior to the effective date as to such Guaranteed Pension Plan of the Pension Protection Act of 2006, §307 of ERISA or §401(a)(29) of the Code. No liability to the PBGC (other than required insurance premiums, all of which have been timely paid) has been incurred by the Borrowers or any ERISA Affiliate with respect to any Guaranteed Pension Plan and there has not been any ERISA Reportable Event (other than an ERISA Reportable Event as to which the requirement of 30 days notice has been waived under PBGC §4043), or any other event or condition which presents a material risk of termination of any Guaranteed Pension Plan by the PBGC. Based on the latest valuation of each Guaranteed Pension Plan (which in each case occurred within twelve months of the date of this representation), and on the actuarial methods and assumptions employed for that valuation, the aggregate benefit liabilities of all such Guaranteed Pension Plans within the meaning of §4001 of ERISA did not exceed the aggregate value of the assets of all such Guaranteed Pension Plans, disregarding for this purpose the benefit liabilities and assets of any Guaranteed Pension Plan with assets in excess of benefit liabilities, by more than $500,000.

(d) Neither the Borrowers nor any ERISA Affiliate has incurred any material liability (including secondary liability) to any Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan under §4201 of ERISA or as a result of a sale of assets described in §4204 of ERISA. Neither the Borrowers nor any ERISA Affiliate has been notified that any Multiemployer Plan is in reorganization or insolvent under and within the meaning of §4241 or §4245 of ERISA or is at risk of entering reorganization or becoming insolvent, or that any Multiemployer Plan intends to terminate or has been terminated under §4041A of ERISA.

(e) None of the Canadian Loan Parties or any of their Subsidiaries have any Canadian Plan other than those listed on **Schedule 9.1.20**, and all monthly and other payments in respect of such Canadian Plans which are pension plans (on account of contributions, special contributions or unfunded liability or solvency deficiencies) or otherwise are accurately set forth in **Schedule 9.1.20**. No Canadian Plan has been terminated or partially terminated or is insolvent or in reorganization, nor have any proceedings been instituted to terminate, in whole or in part, or reorganize any Canadian Plan.

(f) None of the Canadian Loan Parties or any of their Subsidiaries have ceased to participate (in whole or in part) as a participating employer in any Canadian Plan which is a pension plan or has withdrawn from any Canadian Plan which is a pension plan in a complete or partial withdrawal, nor has a condition occurred which if continued would result in a complete or partial withdrawal.

(g) None of the Canadian Loan Parties or any of their Subsidiaries have any unfunded liability on windup or withdrawal liability, including contingent withdrawal or windup liability, to any Canadian Plan or any solvency deficiency in respect of any Canadian Plan.

(h) None of the Canadian Loan Parties or any of their Subsidiaries have any unfunded liability on windup or any liability in respect of any Canadian Plan (including to the FSCO) other than for required insurance premiums or contributions or remittances which have been paid, contributed and remitted when due.

(i) Each Canadian Loan Party and each Subsidiary of a Canadian Loan Party has made all contributions to its Canadian Plans required by law or the terms thereof to be made by it when due, and it is not in arrears in the payment of any contribution, payment, remittance or assessment or in default in filing any reports, returns, statements, and similar documents in respect of the Canadian Plans required to be made or paid by it pursuant to any Canadian Plan, any Applicable Law, act, regulation, directive or order or any employment, union, pension, deferred profit sharing, benefit, bonus or other similar agreement or arrangement.

(j) None of the Canadian Loan Parties or any of their Subsidiaries are liable or, to the best of the Borrowers knowledge, alleged to be liable, to any employee or former employee, director or former director, officer or former officer or other Person resulting from any violation or alleged violation of any Canadian Plan, any fiduciary duty, any Applicable Law or agreement in relation to any Canadian Plan or has any unfunded pension or like obligations or solvency deficiency (including any past service or experience deficiency funding liabilities), other than accrued obligations not yet due, for which it has made full provision in its books and records.

(k) All vacation pay, bonuses, salaries and wages, to the extent accruing due, are properly reflected in the Canadian Loan Parties and their Subsidiaries books and records.

(l) Without limiting the foregoing, all of the Canadian Loan Parties and their Subsidiaries Canadian Plans are duly registered where required by, and are in compliance and good standing in all material respects under, all Applicable Laws, acts, statutes, regulations, orders, directives and agreements, including, without limitation, the ITA, the *Supplemental Pension Plans Act* (Quebec) and the *Pension Benefits Act* (Ontario), any successor legislation thereto, and other Applicable Pension Legislation of any jurisdiction.

(m) None of the Canadian Loan Party or any of their Subsidiaries have made any application for a funding waiver or extension of any amortization period in respect of any Canadian Plan.

(n) There has been no prohibited transaction or violation of any fiduciary responsibilities with respect to any Canadian Plan.

(o) There are no outstanding or pending or threatened investigations, claims, suits or proceedings in respect of any Canadian Plans (including to assert rights or claims to benefits) that could give rise to a Material Adverse Effect.

9.1.21. **Trade Relations.** There exists no actual or threatened termination, limitation or modification of any business relationship between any Loan Party or any Subsidiary and any customer or supplier, or any group of customers or suppliers, individually or in the aggregate the consequence of which could reasonably be expected to result in a Material Adverse Effect.

9.1.22. **Labor Relations.** Except as described on **Schedule 9.1.22**, no Loan Party or Subsidiary is party to or bound by any (a) management agreement, (b) consulting agreement where the aggregate obligations of such Loan Party or Subsidiary thereunder are in excess of the Dollar Equivalent of $100,000 or (c) collective bargaining agreement. There are no material grievances, disputes or controversies with any union or other organization of any Loan Party s or Subsidiary s employees, or, to any Loan Party s knowledge, any asserted or threatened strikes, work stoppages or demands for collective bargaining that, in any case, could reasonably be expected to result in a Material Adverse Effect.

9.1.23. **Not a Regulated Entity.** No Loan Party is (a) an investment company or a person directly or indirectly controlled by or acting on behalf of an investment company within the meaning of the Investment Company Act of 1940; (b) a holding company , or a subsidiary company of a holding company , or an affiliate of a holding company , as such terms are defined in the Public Utility Holding Company Act of 2005; or (c) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other Applicable Law regarding its authority to incur Debt.

9.1.24. **Margin Stock.** No Loan Party or Subsidiary is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No proceeds of the Term Loan will be used by the Loan Parties to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose governed by Regulations T, U or X of the Board of Governors.

9.1.25. **Certain Transactions.** Except as set forth on **Schedule 9.1.25** and except with respect to employee discount and similar programs conducted in the ordinary course of business and consistent with past practices, none of the officers, directors, or employees of any Loan Party is presently a party to any transaction with any Loan Party (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, director or such employee or, to the knowledge of any Loan Party, any corporation, partnership, trust or other Person in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

9.1.26. **Patriot Act.** To the extent applicable, each Loan Party is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the Patriot Act**.** No part of the proceeds of the Term Loan 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.

9.1.27. **Complete Disclosure.** No (x) Loan Document or (y) information (except financial projections) provided by or on behalf of any Loan Party and delivered to the Lenders in connection with the transactions contemplated hereby, contains, as and when delivered, any untrue statement of a material fact, nor fails to disclose any material fact necessary to make the statements contained therein not materially misleading. All financial projections provided by or on behalf of any Loan Party and delivered to the Lenders in connection with the transactions contemplated hereby have been prepared in good faith based on reasonable assumptions.

9.1.28. **Use of Proceeds.** The proceeds of the Term Loan shall be used solely (a) to pay fees and transaction expenses associated with the closing of this credit facility; and (b) to reduce the Revolving Loan Debt to create availability under the Revolving Borrowing Capacity for use by the Borrowers for working capital and other lawful corporate purposes of the Borrowers and their Subsidiaries in accordance with this Agreement and the Revolving Credit Agreement. No proceeds of the Term Loan may be used, nor shall be requested, with a view towards the accumulation of any general fund or funded reserve of the Borrowers other than in the ordinary course of the Borrowers business and consistent with the provisions of this Agreement.

9.1.29. **Non-Material Subsidiaries.** None of the Non-Material Subsidiaries owns any assets used in connection with any of the Loan Parties business operations.

9.1.30. **Quebec Premises.** As of the Closing Date, the lease arrangements for the property located at 1425 Argyle Avenue, Montreal, Quebec have been terminated and none of the Loan Parties nor any of their Collateral is located at such property.

9.1.31. **Alloyco International.** As of the Closing Date, no Loan Party utilizes Alloyco International Inc. as a processor.

9.1.32. **Certain Consignment Arrangements.** As of the Closing Date, no Loan Party holds any consigned inventory from any of Clover Corporation, M. Fabrikant & Sons, Inc. or S.H.R. Inc.

SECTION 10. COVENANTS AND CONTINUING AGREEMENTS

10.1. Affirmative Covenants. For so long as any Obligations are outstanding, each Loan Party shall, and shall cause each Subsidiary to:

10.1.1. **Inspections; Collateral Reports; Appraisals.**

(a) Permit the Lenders, through the Administrative Agent, a Lender or any of the Lenders other designated representatives, to visit and inspect any of the properties of the Loan Parties or any of their Subsidiaries, to examine the books of account of the Loan Parties and their Subsidiaries (and, subject to the confidentiality provisions contained herein, to make copies thereof and extracts therefrom, duplicate, cause to be reduced to hard copy, run off, draw off, and otherwise use any and all computer or electronically stored information or data which relates to the Loan Parties, or any service bureau, contractor, accountant, or other person), and to discuss the affairs, finances and accounts of the Loan Parties and their Subsidiaries with, and to be advised as to the same by, its and their officers, and to conduct examinations and verifications (whether by internal commercial finance examiners or independent auditors) of all components included in the Term Loan Borrowing Capacity, all, prior to the occurrence and during the continuance of an Event of Default, upon prior reasonable notice and at such reasonable times and intervals as the Administrative Agent or any Lender may reasonably request. The Administrative Agent and any Lender may, at the Borrowers expense, participate in or observe any physical count of inventory included in the Collateral.

(b) Upon the request of the Administrative Agent and at the Borrowers expense, but in any event four (4) times during each calendar year in which no Event of Default has occurred, the Borrowers will obtain and deliver to the Administrative Agent, or, if the Administrative Agent so elects, will cooperate with the Administrative Agent in the Administrative Agent s obtaining, a report of an independent collateral auditor satisfactory to the Administrative Agent (which auditor shall not be affiliated with any existing Lender or any existing Revolving Lender) with respect to the Accounts and Inventory components included in the Term Loan Borrowing Capacity (each, a Collateral Value Report), which Collateral Value Report shall indicate whether or not the information set forth in the Borrowing Base Certificate most recently delivered is accurate and complete in all material respects based upon a review by such auditors of the Accounts (including verification with respect to the amount, aging, identity and credit of the respective Account Debtors and the billing practices of the Borrowers or their applicable Subsidiary) and Inventory (including verification as to the ownership, value, location and respective types). Notwithstanding the foregoing or anything to the contrary contained herein, (x) unless an Event of Default has occurred and is continuing, the Administrative Agent shall not require that any such Collateral Value Reports be obtained at the Borrowers expense so long as the Revolving Agent has obtained at least four (4) such Collateral Value Reports in each Fiscal Year and has shared such Collateral Value Reports obtained under the Revolving Credit Agreement with the Administrative Agent pursuant to the terms of the Intercreditor Agreement; provided that, in the event that the Revolving Agent has not obtained such Collateral Value Reports and/or has not shared such Collateral Value Reports with the Administrative Agent, the Administrative Agent may require, at the Borrowers expense, an amount of Collateral Value Reports equal to (i) four (4) minus (ii) such number of Collateral Value Reports obtained by the Revolving Agent and shared with the Administrative Agent in such time period (unless an Event of Default has occurred and is continuing, in which case the Administrative Agent may require the Borrowers to obtain, or cooperate with the Administrative Agent s obtaining, such Collateral Value Reports as it determines in its discretion, in any event at the Borrowers expense), and (y) at any time, the Administrative Agent may require may require the Borrowers to obtain, or cooperate with the Administrative Agent s obtaining, such additional Collateral Value Reports as it deems necessary or desirable at the Administrative Agent s expense.

(c) In addition to the desktop appraisal reports set forth in clause (d) below, upon the request of the Administrative Agent and at the Borrowers expense, but in any event four (4) times during each calendar year in which no Event of Default has occurred, the Borrowers will obtain and deliver to the Administrative Agent appraisal reports, or if the Administrative Agent so elects, will cooperate with the Administrative Agent in the Administrative Agent s obtaining appraisal reports, in each case in form and substance reasonably satisfactory to the Administrative Agent stating the then current net orderly liquidation value or going out of business values of all or a portion of the Inventory and the then current forced liquidation value of all or any portion of the Private Label Accounts and all Accounts due from corporate sales accounts and wholesale accounts. Upon the request of the Administrative Agent and at the Borrowers expense, the Borrowers will obtain and deliver to the Administrative Agent appraisal reports in form and substance and from appraisers reasonably satisfactory to the Administrative Agent, stating (i) the then current fair market, orderly liquidation and forced liquidation values of all or any portion of the Inventory, Accounts, the Equipment or Real Estate owned by the Borrowers or any of their Subsidiaries and (ii) the then current liquidation value of each of the Borrowers and their Subsidiaries. Notwithstanding the foregoing or anything to the contrary contained herein, (x) unless an Event of Default has occurred and is continuing, the Administrative Agent shall not require that any such appraisal reports be obtained so long as the Revolving Agent has obtained at least four (4) such appraisal reports in each Fiscal Year and has shared such appraisal reports obtained under the Revolving Credit Agreement with the Administrative Agent pursuant to the terms of

the Intercreditor Agreement; provided that, in the event that the Revolving Agent has not obtained such appraisal reports and/or has not shared such appraisal reports with the Administrative Agent, the Administrative Agent may require, at the Borrowers expense, an amount of appraisal reports equal to (i) four (4) minus (ii) such number of appraisal reports obtained by the Revolving Agent and shared with the Administrative Agent in such time period (unless an Event of Default has occurred and is continuing, in which case the Administrative Agent may require the Borrowers to obtain such appraisal reports as it determines in its discretion, in any event at the Borrowers expense), and (y) at any time, the Administrative Agent may require may require the Borrowers to obtain, or cooperate with the Administrative Agent s obtaining, such additional appraisal reports as it deems necessary or desirable at the Administrative Agent s expense.

(d) Upon the request of the Administrative Agent and at the Borrowers expense, the Borrowers will obtain and deliver to the Administrative Agent, or, if the Administrative Agent so elects, will cooperate with the Administrative Agent in the Administrative Agents obtaining, a desktop appraisal report of an independent appraiser satisfactory to the Administrative Agent (which appraiser shall not be affiliated with any existing Lender or any existing Revolving Lender) with respect to the Inventory components included in the Term Loan Borrowing Capacity. Without limiting the foregoing, for the period commencing on the Closing Date and continuing through July 15, 2009, the Borrowers shall obtain and deliver to the Administrative Agent or cooperate with the Administrative Agent in obtaining desktop appraisal reports satisfactory to the Administrative Agent, which shall be delivered monthly by no later than the fifteenth (15th) day of each calendar month, with the first such appraisal to be delivered on January 15, 2009. Notwithstanding anything to the contrary contained herein, unless an Event of Default has occurred and is continuing, the Administrative Agent shall not require that any such desktop appraisal reports be obtained so long as the Revolving Agent has obtained such desktop appraisal reports and has shared such desktop appraisal reports obtained under the Revolving Credit Agreement with the Administrative Agent pursuant to the terms of the Intercreditor Agreement; provided that, in the event that the Revolving Agent has not obtained such desktop appraisal reports and/or has not shared such desktop appraisal reports with the Administrative Agent, the Administrative Agent may require, at the Borrowers expense, an amount of desktop appraisal reports equal to (i) the number of desktop appraisal reports which the Administrative Agent is entitled to receive pursuant to the terms of this Section 10.1.1(d) in the applicable time period minus (ii) such number of desktop appraisal reports obtained by the Revolving Agent and shared with the Administrative Agent in such time period (unless an Event of Default has occurred and is continuing, in which case the Administrative Agent may require the Borrowers to obtain such appraisal reports as it determines in its discretion, in any event at the Borrowers expense).

10.1.2. **Financial and Other Information.** Keep adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP reflecting all financial transactions; and furnish to the Administrative Agent and the Lenders:

(a) as soon as available, but in any event not later than (i) 90 days after the close of each Fiscal Year, the unaudited consolidated balance sheet of the Borrowers and their Subsidiaries as at the end of such Fiscal Year, and the related consolidated statement of income, shareholder s equity, cash flows and same store sales performance metrics of the Borrowers and their Subsidiaries for such Fiscal Year, which statements shall be in reasonable detail and, other than with respect to such same store sales performance metrics, prepared in accordance with GAAP (except for the absence of footnotes, normal recording year-end adjustments, and consolidation and elimination entries and intercompany charges), and in each case shall set forth in comparative form corresponding figures for the preceding Fiscal Year, the most recent projections provided pursuant to **Section 10.1.2(g)** and

other information acceptable to the Administrative Agent and (ii) the earlier of (x) 120 days after the close of each Fiscal Year and (y) the date on which the audited financial statements of the Borrowers and their Subsidiaries are provided to any other Person, consolidated balance sheet of the Borrowers and their Subsidiaries as at the end of such Fiscal Year, and the related consolidated statement of income, shareholder s equity and cash flows of the Borrowers and their Subsidiaries for such Fiscal Year, which consolidated financial statements shall be audited and certified (without qualification as to scope, going concern or similar items) by a firm of independent certified public accountants of recognized standing selected by the Borrowers and acceptable to the Administrative Agent (it being acknowledged that KPMG LLP shall be acceptable to the Administrative Agent), and shall set forth in comparative form corresponding figures for the preceding Fiscal Year and the most recent projections provided pursuant to **Section 10.1.2(g)** and other information acceptable to the Administrative Agent.

(b) as soon as available, but in any event not later than 45 days after the end of each Fiscal Quarter of each Fiscal Year of the Borrowers (including, without limitation, the fourth Fiscal Quarter of each Fiscal Year of the Borrowers for which the deadline shall be 75 days), unaudited balance sheets as of the end of such Fiscal Quarter and the related statements of income and cash flows and same store sales performance metrics for such Fiscal Quarter and for the portion of the Fiscal Year then elapsed, on a consolidated basis for the Borrowers and their Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year and the most recent projections provided pursuant to **Section 10.1.2(g)** and certified by a Senior Officer of the Borrowers as prepared in accordance with GAAP (other than with respect to such same store sales performance metrics), and fairly presenting the financial position and results of operations for such Fiscal Quarter and period, subject to normal year-end adjustments;

(c) as soon as available, but in any event not later than 30 days after the end of each month (including, without limitation, the third month of each Fiscal Quarter), unaudited balance sheets as of the end of such month and the related statements of income and cash flows and same store sales performance metrics for such month and for the portion of the Fiscal Year then elapsed, on a consolidated basis for the Borrowers and their Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year and the most recent projections provided pursuant to **Section 10.1.2(g)** and certified by a Senior Officer of the Borrowers as prepared in accordance with GAAP (other than such same store sales performance metrics), and fairly presenting the financial position and results of operations for such month and period, subject to normal year-end adjustments;

(d) concurrently with delivery of financial statements under clauses (a) and (b) and (c) above, or more frequently if requested by the Administrative Agent while an Event of Default exists, a Compliance Certificate executed by a Senior Officer of each Borrower (with such certification to be in such Person s capacity as a Senior Officer of such Borrower and not in such Person s individual capacity);

(e) concurrently with delivery of financial statements under clause (a) above, and otherwise promptly after the request by the Administrative Agent, copies of any detailed audit reports or management letters submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any Subsidiary, or any audit of any of them;

(f) concurrently with delivery of financial statements under clause (b) above, and otherwise promptly after the request by the Administrative Agent, a certificate of a duly authorized officer of each Borrower either confirming that there has been no change in such information since the date of the information certificates delivered on the Closing Date or the date of the most recent information certificate delivered pursuant to this Section and/or identifying such changes;

(g) from time to time upon request of the Agents, but in any event no later than 30 days prior to the beginning of each Fiscal Year of the Borrowers, draft projections of the Loan Parties consolidated balance sheets, results of operations, cash flow, budgets and availability under the credit facilities (including, without limitation, projections of Aggregate Excess Availability) for the next three Fiscal Years, year by year, and for such Fiscal Year, on a month by month basis, such draft projections to be made in good faith based on reasonable assumptions of the Borrowers at the time made; and from time to time upon request of the Administrative Agent, but in any event no later than 45 days following the beginning of each Fiscal Year of the Borrowers, final projections of the Loan Parties for each of the types of statements identified herein;

(h) concurrently with delivery of financial statements under clause (b) above, a report setting forth a listing of any new stores, offices or places of business of the Loan Parties since the delivery of the last such report;

(i) at the Administrative Agent s request, a listing of each Loan Party s trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging;

(j) promptly after the sending or filing thereof, copies of any proxy statements, financial statements or reports that any Loan Party has made generally available to its shareholders; copies of any regular, periodic and special reports or registration statements or prospectuses that any Loan Party files with the Securities and Exchange Commission or any other Governmental Authority, or any securities exchange; and copies of any press releases or other statements made available by a Loan Party to the public concerning material changes to or developments in the business of such Loan Party;

(k) compliance certificates (or such other evidence of compliance) with the financial covenants and other terms of the Revolving Loan Documents (or any documents relating to renewals, refinancings and extensions of the Debt incurred thereunder), in each case, at the times and in the forms delivered to the agents and/or the lenders under the Revolving Loan Documents (or any documents relating to renewals, refinancings and extensions of the Debt incurred thereunder);

(l) within fifteen (15) days after the end of each calendar month in each Fiscal Year of the Borrowers, a certification by a Senior Officer of each Borrower (i) that all rent payments of the Borrowers and their Subsidiaries have been made, (ii) that no lease defaults exist for such period and (iii) as to the amount of outstanding consignment accounts payable for such calendar month and the book value determined in accordance with GAAP of Inventory held on a consignment basis;

(m) (i) promptly upon request of the Administrative Agent, furnish to the Administrative Agent a copy of the most recent actuarial statement required to be submitted under §103(d) of ERISA, other Applicable Pension Legislation and Annual Report, Form 5500 or other similar document with all required attachments, in respect of each Guaranteed Pension Plan and Canadian Plan, (ii) promptly upon receipt or dispatch, furnish to the Administrative Agent any notice, report or demand sent or received in respect of a Guaranteed Pension Plan under §§302, 4041, 4042, 4043, 4063, 4065, 4066 and 4068 of ERISA, or in respect of a Multiemployer Plan under §4041A, 4202, 4219, 4242, or 4245 of ERISA or in respect of a Canadian Plan or other similar provisions of Applicable Pension Legislation, (iii) promptly deliver to the Administrative Agent all information required to be reported to the PBGC under Section 4010 of ERISA, (iv) promptly deliver to the Administrative Agent such other documents or governmental reports or filings relating to any Guaranteed Pension Plan, Multiemployer Plan or Canadian Plan as the Administrative Agent shall reasonably request and (v) promptly following any request therefor, on and after the effective date of the Pension Protection Act of 2006, the Borrowers

shall deliver to the Administrative Agent copies of any documents or notices described in Sections 101(j), (k) or (l) of ERISA that the Borrowers or any ERISA Affiliate may request with respect to any Guaranteed Pension Plan or Multiemployer Plan, as applicable; provided, that if the Borrowers or any ERISA Affiliate have not requested such documents or notices from the administrator of sponsor of the applicable Guaranteed Pension Plan or Multiemployer Plan, the Borrowers or ERISA Affiliate shall, upon request from the Administrative Agent, promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof;

(n) promptly upon delivery thereof, copies of all documents and materials of a material financial nature or otherwise provided to any other creditor of any Loan Party or any Subsidiary;

(o) promptly upon request therefor, all information pertaining to the Loan Parties and their Subsidiaries reasonably requested by any Lender in order for such Lender to comply with the provisions of the Patriot Act;

(p) at the request of the Administrative Agent, a thirteen (13) week cash flow report;

(q) promptly but in any event no later than five (5) days after any Loan Party s entry into any consignment arrangement (whether such consignment arrangement is documented or otherwise) in which such Loan Party acts as a consignee, notify the Administrative Agent in writing of such consignment arrangement, specifying the consignor, the consignee, the term of the consignment arrangement, the goods to be consigned and any other material terms of such arrangements and, at the request of the Administrative Agent, promptly deliver true, complete and accurate copies of such consignment agreement and related documents and any amendments, modifications, supplements, waivers or other modifications thereof; and

(r) such other reports and information (financial or otherwise) as the Administrative Agent may request from time to time in connection with any Collateral or any Loan Party s or the Subsidiary s financial condition or business.

Documents required to be delivered pursuant to **Sections 10.1.2(a), (b)** or **(j)** (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the applicable Borrower posts such documents, or provides a link thereto on such Borrower s website on the Internet at the website address indicated in writing to the Administrative Agent and the Lenders by the Borrower Agent; or (ii) on which such documents are posted on such Borrower s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) such Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests such Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) such Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrowers shall be required to provide paper copies of the Compliance Certificates to the Administrative Agent and the Lenders. Except for such Compliance Certificates, no Agent shall have any obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

10.1.3. **Notices.**

(a) Notify the Administrative Agent and the Lenders in writing, promptly after any Senior Officer of any Loan Party obtains knowledge thereof, of any of the following that affects a Loan Party: (i) the threat or commencement of any proceeding or investigation, whether or not covered by insurance, reasonably likely to result in a Material Adverse Effect; (ii) any material pending or threatened labor dispute, strike or walkout, or the expiration of any material labor contract; (iii) any material default under or termination of a Material Contract; (iv) the existence of any Default or Event of Default; (v) any default under the Revolving Loan Documents, the Brinkhaus Debt Documents, the Rhode Island Debt Documents, the Rolex Documents, the Quebec Subordinated Debt Documents or any other document, instrument or agreement evidencing Debt in excess of the Dollar Equivalent of $500,000; (vi) any judgment in an amount exceeding the Dollar Equivalent of $750,000; (vii) the assertion of any Intellectual Property Claim, if an adverse resolution is reasonably likely to result in a Material Adverse Effect; (viii) any violation or asserted violation of any Applicable Law (including ERISA, OSHA, FLSA, or any Environmental Laws), if an adverse resolution is reasonably likely to result in a Material Adverse Effect; (ix) any material Environmental Release by a Loan Party or on any Property owned, leased or occupied by a Loan Party; or receipt of any Environmental Notice; (x) any circumstance or occurrence reasonably likely to result in a Material Adverse Effect; (xi) any change in the board of directors (or similar governing body) of either Borrower; (xii) the discharge of or any withdrawal or resignation by the Loan Parties independent accountants; (xiii) any material change in any Loan Party s accounting or financial reporting practices; (xiv) any incurrence of Debt, issuance of Capital Stock or dispositions of Property with a fair market value in excess of the Dollar Equivalent of $500,000, in each case, by any Loan Party or, if applicable, any change in any Debt rating of any Loan Party; (xv) any opening of a new store, office or place of business; (xvi) any damage to, or destruction of, any material portion of the Collateral; (xvii) a US Revolver Overadvance or a Canadian Overadvance (as such terms are defined in the Revolving Credit Agreement) as a result of a decrease in the US Borrowing Capacity or the Canadian Borrowing Capacity , as applicable, in which case such notice shall also include the amount of such Overadvance Loan (as such terms are defined in the Revolving Credit Agreement); (xviii) any Loan Party s adoption of a French form of name or any change in any Loan Party s corporate name, identity, corporate structure, chief executive office, domicile or Federal Taxpayer Identification Number, and (xix) any notices, materials or other information provided outside the ordinary course of business to the agents and/or lenders under the Revolving Loan Documents, the Brinkhaus Debt Documents, the Rhode Island Debt Documents, the Rolex Documents, or the Quebec Subordinated Debt Documents. The Loan Parties hereby agree not to effect or permit any change referred to in clause (xviii) above unless all filings have been made under the UCC, PPSA or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in and Lien on all the Collateral as contemplated in the Security Documents.

(b) Notify the Administrative Agent in writing, promptly after any Senior Officer of any Loan Party obtains knowledge of (i) any determination by any Borrower or any Subsidiary that the Inventory levels of such Borrower or such Subsidiary are not adequate to meet the sales projections of such Borrower or such Subsidiary, and (ii) any failure of any Borrower or any Subsidiary to pay rent at any location, which failure continues for more than fifteen (15) days following the day on which such rent is due and payable by such Borrower or such Subsidiary.

10.1.4. **Landlord and Storage Agreements.** Upon request, provide the Administrative Agent with copies of all existing agreements, and promptly after execution thereof provide the Administrative Agent upon request with copies of all future agreements, between a Loan Party and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral having an aggregate value of more than the Dollar Equivalent of $100,000 may be kept or that otherwise may possess or handle any Collateral.

10.1.5. **Compliance with Laws; Organizational Documents; Material Contracts.** Comply (a) with all Applicable Laws, including ERISA, Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws, and laws regarding pension plans and the collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, unless failure to comply or maintain could not reasonably be expected to have a Material Adverse Effect, (b) with all Organizational Documents unless failure to comply therewith would not (x) be reasonably expected to have a Material Adverse Effect and (y) be reasonably expected to have a materially adverse effect on the Administrative Agent or any Lender and (c) with all of its Material Contracts except in each case where the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, if any material Environmental Release occurs at or on any Properties of any Loan Party or any Subsidiary, it shall act promptly and diligently to investigate and report to the Administrative Agent and all appropriate Governmental Authorities the extent of, and to make appropriate remedial action to eliminate, such Environmental Release, whether or not directed to do so by any Governmental Authority.

10.1.6. **Taxes.** Pay, remit and discharge all Taxes prior to the date on which they become delinquent or penalties attach, unless such Taxes are being Properly Contested.

10.1.7. **Insurance.** In addition to the insurance required hereunder with respect to Collateral, maintain insurance with insurers (rated A or better by Best Rating Guide) reasonably satisfactory to the Administrative Agent, with respect to the Properties, business and business interruption of the Loan Parties and Subsidiaries of such type (including product liability, workers compensation, larceny, embezzlement, or other criminal misappropriation insurance), in each case, in such amounts, and with such coverages and deductibles as are customary for companies similarly situated.

10.1.8. **Licenses.** Keep each License affecting any Collateral (including the manufacture, distribution or disposition of Inventory) or any other material Property of the Loan Parties and Subsidiaries in full force and effect, if the failure to maintain such License is reasonably likely to result in a Material Adverse Effect, promptly notify the Administrative Agent of any proposed modification to any such License, or entry into any new License, in each case at least 30 days prior to its effective date and notify the Administrative Agent of any default or breach asserted by any Person to have occurred under any License.

10.1.9. **Future Subsidiaries.** Promptly notify the Administrative Agent upon any Person s becoming a Subsidiary and cause such Person, within 45 days after such Person becomes a Subsidiary, to (i) join this Agreement and the other Loan Documents, in a manner reasonably satisfactory to the Administrative Agent, as a Borrower or Guarantor hereunder and thereunder (such determination to be made by the Administrative Agent in its sole discretion), and (ii) execute and deliver such documents, instruments and agreements and to take such other actions as the Administrative Agent shall require to evidence and perfect a Lien (subject only to the Liens in favor of the Revolving Agent or the Canadian Revolving Agent) in favor of the Administrative Agent (for the benefit of the Secured Parties) on all assets of such Person as security for the Obligations, including delivery of such legal opinions and such other information, in form and substance reasonably satisfactory to the Administrative Agent, as it shall deem reasonably appropriate.

10.1.10. **Payment of Obligations.** Pay and discharge as the same shall become due and payable all its obligations and liabilities, including (a) all lawful claims which, if unpaid, would by law become a Lien (other than a Permitted Lien) upon its property; and (b) all Debt, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Debt.

10.1.11. **Preservation of Existence.** Preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization.

10.1.12. **Maintenance of Properties.** Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in working order and condition, ordinary wear and tear excepted and make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

10.1.13. **Books and Records.** Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of such Loan Parties or such Subsidiary, as the case may be.

10.1.14. **Compliance with Terms of Leaseholds.** Make all payments and otherwise perform all obligations in respect of all leases of real property to which any Loan Party or any of its Subsidiaries is a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify the Administrative Agent of any default by any party with respect to such leases and cooperate with the Administrative Agent in all respects to cure any such default, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

10.1.15. **Use of Proceeds.** Use the proceeds of the Term Loan solely for the purposes set forth in **Section 2.1.3**.

10.1.16. **Lien Searches.** Promptly following receipt of the acknowledgment copy of any financing statements filed under the UCC or the PPSA in any jurisdiction (or the equivalent in any foreign jurisdiction) by or on behalf of the Secured Parties, deliver to the Administrative Agent completed requests for information listing such financing statement and all other effective financing statements filed in such jurisdiction that name any Loan Party as debtor, together with copies of such other financing statements.

10.1.17. **Lien Waivers and Lien Priority Agreements.** Use commercially reasonable efforts to deliver not later than 45 days after the opening of any new location, Lien Waivers for each distribution center, warehouse or storage facility at which Collateral is located; provided, that the Loan Parties shall use commercially reasonable efforts to deliver not later than 10 days after the opening of any new location in a province or territory of Canada in which there is no PPSA registration, Lien Waivers for each distribution center, warehouse or storage facility at which Collateral is located. Each Loan Party shall, and shall cause each of its Subsidiaries to, use commercially reasonable efforts to deliver a Lien Priority Agreement for each of the Loan Party s locations in the province of Québec, Canada with respect to which registered hypothecs have priority over the Lien of the Administrative Agent in any of the Collateral.

10.1.18. **Sales Taxes.** If requested by the Administrative Agent, all or any portion of any Loan will be set aside by the relevant Borrower to cover such Borrower s obligations for overdue sales or goods and services Tax on account of sales since the then most recent Borrowing pursuant to the Notice of Borrowing delivered in connection therewith.

10.1.19. **[Reserved.]**

10.1.20. **Lenders Meetings.** Upon the request of the Administrative Agent or the Required Lenders, participate in a meeting of the Administrative Agent and the Lenders once during each Fiscal Year to be held at the Borrowers corporate offices (or at such other location as may be agreed to by the Borrowers and the Administrative Agent) at such time as may be agreed to by the Borrowers and the Administrative Agent.

10.1.21. **Communication with Accountants.** Upon the Administrative Agent s reasonable request, authorize and instruct that the Borrowers independent certified public accountants communicate with the Administrative Agent with respect to the financial condition of the Borrowers and their Subsidiaries and make available all documents and other information reasonable requested by the Administrative Agent; provided that the Borrowers and the other Loan Parties may participate in all such communications.

10.1.22. **Further Assurances.** Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by Applicable Law, subject any Loan Party s or any of its Subsidiaries properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Security Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Security Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

10.1.23. **Freight Forwarder Arrangements.** Within thirty (30) days of the Closing Date, the Loan Parties shall obtain and deliver to the Administrative Agent a Lien Waiver, in form and substance satisfactory to the Administrative Agent, as to each of the freight forwarders identified on the information certificate delivered to the Administrative Agent on the Closing Date, unless receipt of any such Lien Waiver or freight forwarder agreement is waived in writing by the Administrative Agent upon its reasonable business judgment that the costs associated with delivery of such Lien Waiver are excessive in relation to the benefits provided.

10.2. Negative Covenants. For so long as any Obligations are outstanding, each Loan Party shall not, and shall cause each Subsidiary not to:

10.2.1. **Permitted Debt.** Create, incur, guarantee or suffer to exist any Debt, except:

(a) the Obligations;

(b) the Revolving Loan Debt;

(c)(i) the Quebec Existing Subordinated Debt in an amount not to exceed Cdn $799,785.00 at any time, and (ii) any Quebec New Subordinated Debt; provided that (A) the Quebec Subordinated Debt Documents shall be in form and substance reasonably satisfactory to the Administrative Agent, (B) the Quebec Subordinated Debt shall be subject to the Quebec Subordination Agreement and (C) the aggregate outstanding principal amount of any such Quebec New Subordinated Debt shall not exceed at any time Cdn. $4,000,000 less the aggregate amount of the Quebec Existing Subordinated Debt;

(d) Intercompany Debt;

(e) endorsements for collection, deposit or negotiation and warranties of products or services, in each case incurred in the Ordinary Course of Business;

(f) Debt described in **Schedule 10.2.1**, but not any extensions, renewals or replacements of such Debt except (i) renewals and extensions expressly provided for in the agreements evidencing any such Debt as the same are in effect on the date of this Agreement and (ii) refinancings and extensions of any such Debt if the terms and conditions thereof are not materially less favorable (taken as a whole) to the obligor thereon or to the Lenders than the Debt being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Debt being refinanced or extended; provided that such Debt permitted under the immediately preceding clause (i) or (ii) above shall not (A) include Debt of an obligor that was not an obligor with respect to the Debt being extended, renewed or refinanced, (B) exceed in a principal amount the Debt being renewed, extended or refinanced, except by an amount equal to a premium on or other amount paid and fees and expenses reasonably incurred in connection with such renewal, extension or refinancing or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(g) Debt incurred in connection with the acquisition, lease or leasing after the Closing Date of any equipment or fixtures by a Loan Party or under any Capital Lease, provided that the aggregate principal amount of such Debt of the Loan Parties shall not exceed the Dollar Equivalent of $10,000,000 at any one time;

(h) the Brinkhaus Debt, provided that the aggregate principal amount of such Brinkhaus Debt shall not exceed at any time Cdn. $5,100,000, less all principal amounts paid on the Brinkhaus Debt;

(i) the Rhode Island Debt, provided that the aggregate principal amount of such Rhode Island Debt shall not exceed at any time $1,200,000, less any amounts of the Rhode Island Debt repaid on the Rhode Island Debt;

(j) such other unsecured Debt that is expressly subordinated to the Full Payment of the Obligations on terms and conditions and pursuant to a subordination agreement acceptable to the Administrative Agent; provided that the aggregate principal amount of such Debt of the Loan Parties shall not exceed the Dollar Equivalent of $5,000,000 at any time; and

(k) unsecured Debt constituting the Management Debt to the extent subject to the Management Subordination Agreement.

10.2.2. **Permitted Liens.** Create or suffer to exist any Lien upon any of its Property, except the following (collectively, Permitted Liens):

(a) Liens in favor of the Administrative Agent for the benefit of the Secured Parties granted pursuant to any Loan Document;

(b) Liens securing the Revolving Loan Debt, subject to the provisions of the Intercreditor Agreement;

(c) Liens to secure Taxes in respect of obligations not overdue or being Properly Contested, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, or Liens on Properties to secure claims for labor, material or supplies in respect of obligations not overdue or being Properly Contested, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) deposits or pledges made in connection with, or to secure payment of, workmen s compensation, unemployment insurance, old age pensions or other social security or like obligations;

(e) Liens on Properties in respect of judgments or awards that have been in force for less than the applicable period for taking an appeal so long as execution is not levied thereunder or in respect of which a Borrower or any such Subsidiary shall at the time in good faith be prosecuting an appeal or proceedings for review and in respect of which a stay of execution shall have been obtained pending such appeal or review;

(f) Liens of carriers, warehousemen, mechanics and materialmen, and other like Liens on Properties, in existence less than 120 days from the date of creation thereof in respect of obligations not overdue or being Properly Contested, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(g) encumbrances on Real Estate consisting of easements, servitudes, rights of way, zoning restrictions, restrictions on the use of Real Estate and defects and irregularities in the title thereto, landlord s or lessor s liens and other minor Liens, provided that none of such Liens (A) interferes materially with the use of the Property affected in the Ordinary Course of Business, and (B) individually or in the aggregate has, or could reasonably be expected to have, a Material Adverse Effect;

(h) Liens existing on the date hereof and listed on **Schedule 10.2.2** hereto (other than Permitted Liens described in clauses (a), (b), (j), (m), (n) and (p) of this **Section 10.2.2**);

(i) purchase money security interests in or purchase money mortgages or vendors hypothecs on Property acquired after the date hereof to secure purchase money Debt of the type and amount permitted by **Section 10.2.1(g)**, incurred in connection with the acquisition of such Property, which security interests, vendors hypothecs, mortgages, conditional sales agreements, installment sales agreements or other like title retention agreements with respect to Property acquired cover only the Property so acquired, together with the accessories thereto and proceeds thereof;

(j) the Rolex Liens, provided that such Rolex Liens shall, at all times be, subordinate and junior in priority to the Liens securing the Obligations pursuant to the Rolex Subordination Agreement;

(k) Liens of a bank or financial institution with respect to funds deposited with such institution, including in respect of contractual rights of set-off;

(l) Liens representing the replacement, extension or renewal of any Liens permitted in clauses (a) through (k) above, provided that (A) any such replacement, extension or renewal Liens shall encumber the same Property (and no additional Property of

the Loan Parties) as covered by the Liens that are so replaced, extended or renewed, and (B) the aggregate amount of Debt secured by such Property has not increased as a result of or in connection with such replacement, extension or renewal;

(m) Liens securing the Quebec Subordinated Debt permitted pursuant to **Section 10.2.1(c)**, provided that such Liens shall, at all times be, subordinate and junior in priority to the Liens securing the Obligations pursuant to the Quebec Subordination Agreement;

(n) Liens securing the Brinkhaus Debt permitted under **Section 10.2.1(h)**, provided that such Liens do not extend to any assets other than those acquired under the Acquisition Agreement at the time of closing thereof pursuant to the terms of the Acquisition Agreement; and

(o) Liens created in connection with any goods or merchandise on consignment in which any Loan Party acts as consignor , provided that the Borrowers shall have delivered written notice to the Administrative Agent of the applicable Loan Party s intention to enter into such consignment arrangements at least ten (10) days prior to the entry thereof and shall have provided the Administrative Agent complete copies of the proposed consignment agreements (if any); and

(p) Liens securing the Rhode Island Debt permitted under **Section 10.2.1(i)**, provided that such Liens do not extend to any assets other than those granted under the Rhode Island Debt Documents at the time of closing thereof pursuant to the terms of the Rhode Island Debt Documents and shall, at all times be, subordinate and junior in priority to the Liens securing the Obligations pursuant to the Rhode Island Subordination Agreement.

10.2.3. **Equitable Lien.** If any Loan Party shall create or assume any Lien upon any of its Properties, whether now owned or hereafter acquired, other than Permitted Liens, it shall make or cause to be made effective provisions whereby the Obligations will be secured by such Lien equally and ratably with any and all other Debt secured thereby as long as any such Debt shall be so secured; provided that, notwithstanding the foregoing, this covenant shall not be construed as a consent by the Required Lenders to the creation or assumption of any such Lien not otherwise permitted hereby. No Loan Party shall grant any Lien on any Property to the Revolving Lenders unless such Loan Party grants a Lien on such Property to the Administrative Agent.

10.2.4. **No Further Negative Pledges.** Enter into any agreement prohibiting the creation or assumption of any Lien upon any of its Properties (other than the Loan Documents and the Revolving Loan Documents), whether now owned or hereafter acquired, except with respect to (a) restrictions on specific assets which assets are the subject of purchase money security interests to the extent permitted under **Section 10.2.2(i)**, and (b) customary anti-assignment provisions contained in leases and licensing and other agreements entered into by a Loan Party in the Ordinary Course of Business.

10.2.5. **[Reserved.]**

10.2.6. **Restricted Junior Payments.** Through any manner or means or through any other Person, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except:

(a) the Borrowers shall be permitted to declare dividends or distributions on or in respect of any shares of any class of Capital Stock of the Borrowers on a quarterly basis but in any event not later than forty-five (45) days after each date on which the Borrowers deliver their financial statements to the Lenders in accordance with **Section 10.1.2(b)**, in each case in an amount not to exceed 33% of Consolidated Net Income for the twelve month period ended as of each such Fiscal Quarter, provided that (i) Fixed

Charge Coverage Ratio, measured on a pro forma basis after giving effect to any such payment, is greater than 1.30:1.00, (ii) the aggregate amount of such dividends and distributions actually paid by the Borrowers during the twelve month period ended as of any Fiscal Quarter end shall not exceed 33% of Consolidated Net Income for such twelve month period, (iii) no Default or Event of Default shall have occurred and be continuing at the time such dividends and distributions are made or would result therefrom and (iv) Aggregate Excess Availability shall be greater than or equal to $30,000,000 (A) at all times during the thirty (30) day period preceding the date any such dividends and distributions are made, (B) immediately after giving effect to the making of any such dividends and distributions and (C) on a prospective basis (as demonstrated pursuant to projections of the Borrowers of the type described in **Section 10.1.2(g)**, in form and substance reasonably satisfactory to the Administrative Agent, which shall have been delivered to the Administrative Agent prior to the date of any such dividends and distributions are made), at all times during the twelve month period commencing on the date any such dividends and distributions are made;

(b) [Reserved.]

(c) the Borrowers and the Guarantors shall be permitted to make any payments of principal and interest on any Intercompany Debt to the extent permitted under **Section 10.2.12**; and

(d) the Borrowers shall be permitted to make any payment of the Management Debt to the extent expressly permitted under the Management Subordination Agreement, so long as no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom.

10.2.7. **Restrictions on Subsidiary Distributions.** Except as provided herein and in the Revolving Loan Documents, the Borrowers shall not, and shall not permit any Subsidiary of the Borrowers to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of the Borrowers to (a) pay dividends or make any other distributions on any of such Subsidiary s Capital Stock owned by any Borrower or any other Subsidiary of any Borrower, (b) repay or prepay any Debt owed by such Subsidiary to any Borrower or any other Subsidiary of such Borrower, (c) make loans or advances to the Borrowers or any other Subsidiary of the Borrowers, or (d) transfer any of its property or assets to the Borrowers or any other Subsidiary of the Borrowers other than restrictions (i) in agreements evidencing Debt permitted by **Sections 10.2.1(g)** that impose restrictions on the property so acquired, (ii) in any Contractual Obligation listed in **Schedule 10.2.7** in effect on the Closing Date and (iii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the Ordinary Course of Business.

10.2.8. **[Reserved.]**

10.2.9. **Investments.** Directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture, except:

(a) Investments in cash and Cash Equivalents;

(b) Investments existing on the date hereof and listed on **Schedule 9.1.6(b)** hereto;

(c) Investments consisting of Intercompany Debt to the extent permitted pursuant to **Section 10.2.1(d)**;

(d) Investments consisting of promissory notes received as proceeds of asset dispositions permitted pursuant to **Section 10.2.13(b)**;

(e) Investments consisting of loans and advances to employees for moving, entertainment, travel and other similar expenses in the Ordinary Course of Business not to exceed the Dollar Equivalent of $250,000 in the aggregate at any time outstanding, other than any loans or advances that would be in violation of Section 402 of Sarbanes-Oxley; and

(f) Investments by the Borrowers or any Guarantor in BME IPCO in an amount not to exceed, in the aggregate, the sum of (i) the royalty payments required to be paid by the Borrowers or any of their respective Subsidiaries under Section 7.2 of the BME IPCO Distribution Agreement, plus (ii) the Dollar Equivalent of $250,000 in the aggregate in any Fiscal Year, provided, that no Default or Event of Default shall then be continuing under this Agreement;

provided, however, that, with the exception of Investments referred to in clause (f) of this **Section 10.2.9**, such Investments will be considered Investments permitted by this **Section 10.2.9**, only if all actions have been taken to the satisfaction of the Administrative Agent to provide to the Administrative Agent, for the benefit of the Lenders and the Administrative Agent, a perfected security interest in all of such Investments free of all Liens other than (i) Liens in favor of the Revolving Agent or the Canadian Revolving Agent, or (ii) Permitted Liens entitled to priority under Applicable Law.

10.2.10. **Prepayment and Cancellation of Certain Debt.** Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, any Debt (including, without limitation, (a) any Intercompany Debt or Management Debt (unless otherwise permitted pursuant to **Section 10.2.6**), and (b) the Brinkhaus Debt, the Rhode Island Debt and the Quebec Subordinated Debt (unless otherwise permitted pursuant to **Section 10.2.12**), in each case prior to the due date under the agreements evidencing such Debt as in effect on the Closing Date (or as amended thereafter in accordance with **Section 10.2.11**). Notwithstanding the foregoing, the Borrowers may pay or prepay the Revolving Loan Debt subject to the terms of the Intercreditor Agreement.

10.2.11. **Amendments or Waivers of Revolving Loan Documents, Brinkhaus Debt Documents, Management Agreement, Quebec Subordinated Debt Documents, Rhode Island Debt Documents, and Organizational Documents.** (a) Agree to any amendment, restatement, supplement or other modification to, or waiver of any of its material rights under, the Revolving Loan Documents (except to the extent expressly permitted under the Intercreditor Agreement), the Brinkhaus Debt Documents, the Management Agreement (except to the extent expressly permitted under the Management Subordination Agreement), the Quebec Subordinated Debt Documents, or the Rhode Island Debt Documents without in each case obtaining the prior written consent of the Required Lenders to such amendment, restatement, supplement or other modification or waiver; or (b) amend, modify or change any of its Organizational Documents (including by the filing or modification of any certificate of designation), other than any such amendments, modifications or changes which are not adverse in any material respect to the interests of the Lenders. Each Loan Party shall deliver to the Administrative Agent complete and correct copies of any amendment, restatement, supplement or other modification to or waiver of the Revolving Loan Documents, the Brinkhaus Debt Documents, the Management Agreement, the Quebec Subordinated Debt Documents, the Rhode Island Debt Documents, or Organizational Documents.

10.2.12. **Subordinated Debt.**

(a) Make any payments in respect of the Brinkhaus Debt other than regularly scheduled payments of principal so long as (i) (A) no more than fifteen (15) days and no less than five (5) days prior to any proposed payment, the Administrative Agent shall have received a copy of the written notice provided by Brinkhaus to the Revolving Agent and the Canadian Agent pursuant to Section 10.2.12 (a) of the Revolving Credit Agreement, which notice shall set forth the amount and date of such scheduled payment, and the Administrative Agent shall not have notified Brinkhaus or the Borrowers in writing at any time prior to the making of such payment that the payment is not permitted under this Agreement, (B) no more than five (5) days and no less than three (3) days prior to any proposed payment, the Administrative Agent shall have received evidence satisfactory to the Administrative Agent that the the Aggregate Excess Availability (calculated on a pro forma basis after taking into consideration the payment to be made) shall be not less than $12,000,000, and (C) if such scheduled payment is permitted as provided in this Agreement, such scheduled payment shall be made no later than April 30th of such Fiscal Year (unless otherwise consented to in writing by the Administrative Agent in its sole and absolute discretion), and (ii) no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom. No prepayment of, or payments of interest on, the Brinkhaus Debt may be made without the prior written consent of the Administrative Agent in its sole discretion.

(b) Make any payments in respect of the Quebec Subordinated Debt; provided, that the Loan Parties may make (i) regularly scheduled payments of principal and interest in respect of the Quebec Subordinated Debt so long as no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom, and (ii) prepayments of principal in respect of the Quebec Subordinated Debt so long as (A) Fixed Charge Coverage Ratio, measured on a pro forma basis after giving effect to any such payment, is greater than 1.10:1.00, (B) Aggregate Excess Availability as of such date (calculated on a pro forma basis after taking into consideration the payment to be made) shall be greater than an amount equal to the product of (x) thirty percent (30%) multiplied by (y) the Aggregate Borrowing Capacity (provided that, for purposes of this clause (b)(i)(B), the Aggregate Borrowing Capacity shall be calculated without deduction of the Availability Block, the Brinkhaus Reserve, the Quebec Subordinated Debt Reserve, the Loan to Value Reserve, the Term Loan Discretionary Reserve and the Seasonal Availability Block), (C) such payment is made within fifteen (15) days after the Borrowers have delivered to the Administrative Agent the financial statements pursuant to **Section 10.1.2(b)**, (D) no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom and (E) not less than five (5) days prior to such payment, the Borrowers shall have delivered to the Administrative Agent a certificate certifying, and providing appropriate calculations, as to the matters set forth in clauses (A) through (D) of this clause (b)(ii).

(c) Make any payments in respect of any Intercompany Debt; provided, that the Loan Parties may make such principal and interest payments so long as no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom.

(d) Make any payments in respect of the Rhode Island Debt; provided, that the Loan Parties may make (i) regularly scheduled payments of principal and interest in respect of the Rhode Island Debt so long as no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom, and (ii) prepayments of principal in respect of the Rhode Island Debt so long as (A) Fixed Charge Coverage Ratio, measured on a pro forma basis after giving effect to any such payment, is greater than 1.10:1.00, (B) Aggregate Excess Availability as of such date (calculated on a pro forma basis after taking into consideration the payment to be made) shall be greater than an amount equal to the product of (x) thirty percent (30%) multiplied by (y) the Aggregate Borrowing Capacity (provided that, for purposes of this clause (d)(i)(B), the Aggregate Borrowing Capacity shall be calculated without deduction of the Availability Block, the Brinkhaus Reserve, the Quebec Subordinated Debt Reserve, the Loan to Value Reserve, the Term Loan Discretionary Reserve and the Seasonal Availability Block), (C) such payment is made within fifteen (15) days after the Borrowers have delivered to the Administrative Agent the financial statements pursuant to **Section 10.1.2(b)**, (D) no Default or Event of Default then exists or would (after taking into consideration the payment to be made) result therefrom

and (E) not less than five (5) days prior to such payment, the Borrowers shall have delivered to the Administrative Agent a certificate certifying, and providing appropriate calculations, as to the matters set forth in clauses (A) through (D) of this clause (d)(ii).

10.2.13. **Fundamental Changes; Asset Acquisition; Disposition of Assets.**

(a) Become a party to any merger, amalgamation or consolidation, or agree to or effect any asset acquisition or stock acquisition (other than the acquisition of assets in the Ordinary Course of Business consistent with past practices) except (i) the merger, amalgamation or consolidation of one or more of the Subsidiaries of the Borrowers (other than a Borrower) or the Guarantors (other than a Borrower) with and into one of the Borrowers or the Guarantors, provided that (A) in the event of any merger, amalgamation or consolidation of a Borrower and a Guarantor (other than a Borrower), such Borrower shall be the continuing or surviving Person and (B) other than as described in clause (a)(i)(A) herein, in the event that any Borrower or any Guarantor (other than a Borrower) is a party to such merger, amalgamation or consolidation, such Borrower or such Guarantor shall be the continuing or surviving Person, (ii) the merger, amalgamation or consolidation of two or more Subsidiaries of the Borrowers (other than a Borrower) or the Guarantors (other than a Borrower); provided that in the event any Guarantor is a party to such merger, amalgamation, consolidation, asset acquisition or stock acquisition, such Guarantor shall be the continuing or surviving Person or (iii) any other mergers, amalgamations, consolidations, asset acquisitions or stock acquisitions not otherwise contemplated pursuant to this **Section 10.2.13(a)** in an aggregate amount not to exceed the Dollar Equivalent of $5,000,000, provided that, in each case, (x) in the event any Borrower is a party to such merger, amalgamation, consolidation, asset acquisition or stock acquisition, such Borrower shall be the continuing or surviving Person, (y) the relevant Borrower or Guarantor takes all actions required by the Administrative Agent in order for the Administrative Agent to acquire a perfected security interest (subject only to the first priority security interest in favor of the Revolving Agent or the Canadian Agent) in such newly acquired assets or stock; and (z) in the case of an asset acquisition or a stock acquisition by any Loan Party, such Loan Party shall, at such Loan Party s expense, cause any new Subsidiary (other than a Non-Material Subsidiary) formed or acquired thereby to (A) join this Agreement and the other Loan Documents as required pursuant to **Section 10.1.9** and (B) if any shares of Capital Stock or Debt of such Subsidiary are owned by or on behalf of any Loan Party, such Loan Party shall cause such shares and promissory notes evidencing such Debt to be pledged to the Administrative Agent within 45 days after such Subsidiary is formed or acquired, provided that in no event shall compliance with this **Section 10.2.13(a)** waive or be deemed a waiver or consent to any transaction giving rise to the need to comply with this **Section 10.2.13(a)** if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any such Subsidiary, an approval of such Person as a Borrower or a Guarantor or permit the inclusion of any acquired assets in the computation of the Term Loan Borrowing Capacity (or any component definition thereof); or

(b) Become a party to or agree to or effect any sale, lease, license, consignment, transfer or other disposition of assets, other than (i) the sale of Inventory, the licensing of Intellectual Property and the disposition of obsolete assets, in each case in the Ordinary Course of Business and to a Person other than a Non-Material Subsidiary, and (ii) the sale of Inventory and other assets to a Person other than a Non-Material Subsidiary outside the Ordinary Course of Business in connection with Permitted Store Closings.

10.2.14. **Sales and Leasebacks.** Except for sales of equipment in the Ordinary Course of Business to a Person other than a Non-Material Subsidiary, enter into any arrangement, directly or indirectly, whereby any Loan Party shall sell or transfer any Property owned by it in order then or thereafter to lease such Property or lease other Property that such Loan Party intends to use for substantially the same purpose as the Property being sold or transferred.

10.2.15. **Transactions with Affiliates.** Directly or indirectly, engage in any transaction with any Affiliate (other than for services as employees, officers and directors, including employee discounts consistent with past practices), 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 such Affiliate or, to the knowledge of the Borrowers, any corporation, partnership, trust or other Person in which any such Affiliate has a substantial interest or is an officer, director, trustee or partner, except to the extent (i) such Person is not a Non-Material Subsidiary, and (ii) on terms more favorable to such Person than would have been obtainable on an arm s-length basis with an unrelated party in the Ordinary Course of Business.

10.2.16. **Business Activities; Permitted Store Closings.** (a) Engage directly or indirectly (whether through the Subsidiaries or otherwise) in any type of business other than the businesses conducted by the Loan Parties on the Closing Date and in related businesses, (b) execute, alter, modify, or amend any lease; provided, however, that the Loan Parties may (i) alter, modify or amend any lease in a manner beneficial to the Loan Parties so long as any such alteration, modification or amendment does not adversely affect any rights of the Administrative Agent or the Lenders hereunder and (ii) the Loan Parties may terminate the leases on the retail locations (A) listed on **Schedule 10.2.16** hereto or (B) which otherwise constitute a Permitted Store Closing and are not listed on **Schedule 10.2.16**, or (c) except as provided in clause (b) hereof, commit to, or open or close any location at which a Loan Party maintains, offers for sales, or stores any of the Collateral.

10.2.17. **Accounting Changes; Fiscal Year; Tax Consolidation.** (a) Make or permit any material change, any change which would have a material impact on the results of operations or financial condition or financial statements or make any change which would be determinative as to whether or not the Borrowers and their Subsidiaries would be in compliance with any of the covenants set forth in **Section 10.2** and **Section 10.3** hereof, in accounting policies or reporting practices, without the consent of the Administrative Agent, which consent shall not be unreasonably withheld, except changes that are required by or permitted under GAAP or (b) change its Fiscal Year end from the last Saturday of March of each year.

10.2.18. **Margin Regulations.** Use all or any portion of the proceeds of the Term Loan to purchase or carry margin stock (within the meaning of Regulation U of the Federal Reserve Board) in contravention of Regulation U of the Federal Reserve Board.

10.2.19. **Hedging Agreements.** Enter into any Hedging Agreement.

10.2.20. **No Speculative Transactions.** Engage in any transaction involving commodity options, futures contracts or similar transactions.

10.2.21. **Amendment of Rolex Documents.** Amend any provision of any Rolex Document in a manner adverse to the Administrative Agent and the other Secured Parties without the prior written consent of the Administrative Agent.

10.2.22. **Canadian Subsidiaries.** Permit the Canadian Borrower to have any Subsidiary other than the US Borrower and BME IPCO.

10.2.23. **Non-Material Subsidiaries.** Permit any Non-Material Subsidiary to acquire any assets.

10.2.24. **Jose Hess Trademark.** Permit any Loan Party or any Subsidiary of a Loan Party to use the Jose Hess & Design trademark with registration number 1,100,692 until such trademark has been assigned to a Loan Party and the security interest and Lien of the Administrative Agent is properly recorded against such trademark with the United States Patent and Trademark Office.

10.2.25. **Certain Consignment Arrangements.** Permit any Loan Party or any Subsidiary of a Loan Party to hold any consigned inventory from any of Clover Corporation, M. Fabrikant & Sons, Inc. or S.H.R. Inc. unless and until the Administrative Agent shall have received evidence satisfactory to the Administrative Agent that any UCC filings on record or to be recorded in respect of any consignment arrangements made by such Persons are satisfactory to the Administrative Agent.

SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

11.1. Events of Default. Each of the following shall be an Event of Default hereunder, if the same shall occur for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) Any Borrower fails to pay any principal of the Term Loan, any interest on the Term Loan, any fee or any other amount payable under this Agreement or any other Loan Document, when and as the same shall become due and payable (whether at stated maturity, on demand, upon acceleration or otherwise); or

(b)(i) Any information contained in any Compliance Certificate or Borrowing Base Certificate was untrue or incorrect in any material respect when made or (ii) any representation or warranty made or delivered to the Administrative Agent or any Lender by any Loan Party herein, in connection with any Loan Document or transaction contemplated thereby, or in any written statement, report, financial statement or certificate (other than a Borrowing Base Certificate or Compliance Certificate) is untrue, incorrect or misleading in any material respect when given or confirmed; or

(c)(i) Any Loan Party breaches or fails to perform any covenant contained in **Section 7**, **8**, **10.1** (other than **Section 10.1.2(a), (b), (c) or (g)**) or **10.2**; and (ii) any Loan Party breaches or fails to perform any covenant contained **Section 10.1.2(a), (b), (c) or (g)** for five (5) days after the date otherwise set forth in such section as a deadline for compliance thereof; or

(d) Any Loan Party breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 15 days after a Senior Officer of such Loan Party receives notice thereof from the Administrative Agent; provided, however, that such notice and opportunity to cure shall not apply if the breach or failure to perform is not capable of being cured within such period; or

(e) Any Guarantor repudiates, revokes or attempts to revoke its Guaranty; any Loan Party denies or contests the validity or enforceability of any Loan Documents or Obligations, or the perfection or priority of any Lien granted to the Administrative Agent; or any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by the Administrative Agent and the Lenders) or any Loan Party shall so state in writing; or

(f) Any judgment or order for the payment of money is entered against a Loan Party or any of its Subsidiaries in an amount that exceeds, individually or cumulatively with all unsatisfied judgments or orders against all the Loan Parties and their Subsidiaries, the Dollar Equivalent of $1,000,000 (net of any insurance coverage therefor acknowledged in writing by the insurer), and shall remain unsatisfied, undischarged, unvacated, unbonded or unstayed for a period of 30 days; or

(g) Any Loan Party or any of its Subsidiaries becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any Loan Party or any of its Subsidiaries and is not released, vacated or fully bonded within 45 days after its issue or levy; or

(h) Any loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance exceeds the Dollar Equivalent of $1,000,000; or

(i) Any Loan Party or any of its Subsidiaries is enjoined, restrained or in any way prevented by any Governmental Authority from conducting (i) any material part of its business or (ii) business at more than 10 retail locations, and such order shall continue in effect for more than 5 days; any Loan Party or any of its Subsidiaries suffers the loss, revocation or termination of any material license, permit, lease or agreement necessary to its business and such loss, revocation or termination shall continue unremedied for 5 days; there is a cessation of any material part of a Loan Party s or any of its Subsidiaries business for a material period of time; any Collateral or Property of a Loan Party or any of its Subsidiaries is taken or impaired through condemnation and such loss, revocation or termination is reasonably likely to result in a Material Adverse Effect; any Loan Party or any of its Subsidiaries agrees to or commences any liquidation, dissolution or winding up of its affairs; or any Loan Party or any of its Subsidiaries ceases to be Solvent; or

(j) Any Insolvency Proceeding is commenced by any Loan Party or any of its Subsidiaries; an Insolvency Proceeding is commenced against any Loan Party or any of its Subsidiaries and such Loan Party or such Subsidiary consents to the institution of the proceeding against it, the petition, filing or other proceeding commencing the proceeding is not timely controverted by such Loan Party or such Subsidiary, such petition, filing or other proceeding is not dismissed or stayed within 45 days after its filing or institution, or an order for relief is entered in the proceeding; a trustee (including an interim trustee), receiver (including an interim receiver or receiver manager) monitor, agent, custodian, sequestrator, administrator, liquidator or like official is appointed to take possession of any substantial Property of or to operate any of the business of any Loan Party or any of its Subsidiaries; or any Loan Party or any of its Subsidiaries makes a proposal or offer (or files a notice of intention to make a proposal or offer) of settlement, extension, arrangements or composition to its unsecured creditors generally; or

(k) The Borrowers or any ERISA Affiliate incurs any liability to the PBGC or a Guaranteed Pension Plan pursuant to Title IV of ERISA in an aggregate amount exceeding the Dollar Equivalent of $100,000, or the Borrowers or any ERISA Affiliate is assessed withdrawal liability pursuant to Title IV of ERISA by a Multiemployer Plan requiring aggregate annual payments exceeding the Dollar Equivalent of $100,000, the receipt by the Borrowers or any ERISA Affiliate of notice from any Multiemployer Plan that it is in critical or endangered status, pursuant to Section 432 of the Code and Section 305 of ERISA, or any of the following occurs with respect to a Guaranteed Pension Plan: (i) an ERISA Reportable Event, or a failure to satisfy the minimum funding standards under the Pension Funding Rules, provided that the Administrative Agent determines in its reasonable discretion that such event (A) could be expected to result in a liability of the Borrowers or any of their Subsidiaries to the PBGC or such Guaranteed Pension Plan in an aggregate amount exceeding the Dollar Equivalent of $500,000 and (B) could constitute grounds for the termination of such Guaranteed Pension Plan by the PBGC, for the appointment by the appropriate United States District Court of a trustee to administer such Guaranteed Pension Plan or for the imposition of a Lien in favor of such Guaranteed Pension Plan; or (ii) the appointment by a United States District Court of a trustee to administer such Guaranteed Pension Plan; or (iii) the institution by the PBGC of

proceedings to terminate such Guaranteed Pension Plan; or (iv) any event or condition shall occur or exist with respect to a Canadian Plan that could, in the Administrative Agent s good faith judgment, subject any Canadian Loan Party or any of its Subsidiaries to any tax, penalty or other liabilities under the *Supplemental Pension Plans Act* (Québec) or the *Pension Benefits Act* (Ontario) or any other Applicable Pension Legislation and which could reasonably be expected to give rise to a Material Adverse Effect, or if any Canadian Loan Party or any of its Subsidiaries is in default with respect to required payments to a Canadian Plan or any Lien arises (save for contribution amounts not yet due) in connection with any Canadian Plan; or

(l) Any Loan Party or any of its Subsidiaries is criminally indicted or convicted for (i) a felony committed in the conduct of such Person s business, or (ii) any state, federal or foreign Applicable Law (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act) that could lead to forfeiture of any assets of such Person included in the Term Loan Borrowing Capacity or any assets of such Person not included in the Term Loan Borrowing Capacity but having a fair market value in excess of the Dollar Equivalent of $1,000,000; or

(m)(i) any breach or default of a Loan Party or any of its Subsidiaries occurs under any of the Revolving Loan Documents (or any documents relating to renewals, refinancings and extensions of the Debt incurred thereunder) or (ii) any such Debt shall become or be declared to be due and payable, or be required to be prepaid or repurchased (other than by a regularly scheduled or required prepayment), prior to the stated maturity thereof; provided that such breach or default shall be deemed continuing hereunder until the Administrative Agent or the Required Lenders have expressly waived such breach or default in writing, notwithstanding the fact that such breach or default may have been waived under the terms of the Revolving Loan Documents; or

(n)(i) the earlier of (A) receipt by a Loan Party or any of its Subsidiaries of notice from any applicable party under any of the Brinkhaus Debt Documents, the Rhode Island Debt Documents, the Rolex Documents, or the Quebec Subordinated Debt Documents of the occurrence and continuance of a payment default or the occurrence of a payment default under any of such agreements which has continued for fifteen (15) days or (B) any other material breach or default of a Loan Party or any of its Subsidiaries occurs under any of the Brinkhaus Debt Documents, the Rhode Island Debt Documents, the Rolex Documents, or the Quebec Subordinated Debt Documents (or any documents relating to renewals, refinancings and extensions of the Debt incurred thereunder) or (ii) any such Debt shall become or be declared to be due and payable, or be required to be prepaid or repurchased (other than by a regularly scheduled or required prepayment), prior to the stated maturity thereof; or

(o) Subject to **Section 11.1(n)**, (i) any breach or default of a Loan Party or any of its Subsidiaries occurs under any document, instrument or agreement to which it is a party or by which it or any of its Properties is bound, relating to any Debt (other than the Obligations) in excess of the Dollar Equivalent of $1,000,000, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach or default or (ii) any such Debt shall become or be declared to be due and payable, or be required to be prepaid or repurchased (other than by a regularly scheduled or required prepayment), prior to the stated maturity thereof; or

(p) There shall occur any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty, which in any such case causes, for more than 5 consecutive days, the cessation or substantial curtailment of revenue producing activities at more than 5 retail locations not covered by business interruption insurance; or

(q)(i) Any Security Document shall for any reason fail or cease to create valid, perfected and enforceable Liens on any Collateral purported to be covered thereby or, except as permitted by the Loan Documents, such Liens shall fail or cease to be a perfected with the priorities contemplated by the Intercreditor Agreement, the Quebec Subordination Agreement, the Rhode Island Subordination Agreement, the Rolex Subordination Agreement and the other Security Documents, or any Loan Party shall so state in writing; or (ii) any breach or default by any Person (other than the Administrative Agent) occurs under any Subordination Agreement or the Intercreditor Agreement; or (iii) any Person (other than the Administrative Agent) shall repudiate, revoke or attempt to revoke any Subordination Agreement or the Intercreditor Agreement; or (iv) any of the terms of any Subordination Agreement or the Intercreditor Agreement shall be invalidated or cease to be in full force and effect; or

(r) A Change of Control occurs.

11.2. Remedies upon Default. If an Event of Default described in **Section 11.1(j)** occurs with respect to any Loan Party, then to the extent permitted by Applicable Law, all Obligations shall become automatically due and payable and all Commitments shall terminate, without any action by the Administrative Agent or notice of any kind. In addition, or if any other Event of Default exists, the Administrative Agent may in its discretion (and shall upon written direction of the Required Lenders) do any one or more of the following from time to time:

(a) declare any Obligations immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by the Loan Parties to the fullest extent permitted by law;

(b) make any adjustment to the Term Loan Borrowing Capacity or any component definition therein;

(c) require the Loan Parties to Cash Collateralize Obligations that are contingent or not yet due and payable, and, if the Loan Parties fail promptly to deposit such Cash Collateral, the Administrative Agent may (and shall upon the direction of the Required Lenders) advance the required Cash Collateral as a Protective Advance;

(d) with respect to any Collateral consisting of Inventory, conduct one or more going out of business sales, in the Administrative Agent s own right or by one or more agents, representatives, receivers and contractors. Such sale(s) may be conducted upon any premises owned, leased, or occupied by any Loan Party, and in conjunction with any such sale, (i) the Administrative Agent and any such agent, representative, receiver or contractor may augment the Inventory with other goods (all of which other goods shall remain the sole property of the Administrative Agent or such agent or contractor), (ii) 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 Administrative Agent or such agent or contractor and no Loan Party nor any Person claiming under or in right of such Loan Party shall have any interest therein, (iii) each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Loan Party, and, to the extent permitted by Applicable Law, each Loan Party hereby waives all rights of redemption, stay, valuation and appraisal which such Loan Party now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted; and

(e) exercise any other rights or remedies afforded under any agreement (including, without limitation, this Agreement and the other Loan Documents), by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC, the PPSA, the Civil Code of Québec or Applicable Law. Such rights and remedies include the rights to (i) take possession of any Collateral;

(ii) require the Loan Parties to assemble Collateral, at the Borrowers expense, and make it available to the Administrative Agent at a place designated by the Administrative Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by a Loan Party, the Loan Parties agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as the Administrative Agent, in its discretion, deems advisable. Each Loan Party agrees that 5 days notice of any proposed sale or other disposition of Collateral by the Administrative Agent shall be reasonable. The Administrative Agent shall have the right to conduct such sales on any Loan Party s premises, without charge, and such sales may be adjourned from time to time in accordance with Applicable Law. The Administrative Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and the Administrative Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may set off the amount of such price against the Obligations.

11.3. License. The Administrative Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of the Loan Parties, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral in each case after the occurrence, and during the continuance, of an Event of Default.

11.4. Setoff. The Administrative Agent, the Lenders and their Affiliates are each authorized by the Loan Parties at any time that an Event of Default has occurred and is continuing, without notice to the Loan Parties or any other Person, to set off and to appropriate and apply any deposits (general or special), funds, claims, obligations, liabilities or other Debt at any time held or owing by the Administrative Agent, any Lender or any such Affiliate to or for the account of any Loan Party against any Obligations, whether or not demand for payment of such Obligation has been made, any Obligations have been declared due and payable, are then due, or are contingent or unmatured, or the Collateral or any guaranty or other security for the Obligations is adequate.

11.5. Remedies Cumulative; No Waiver.

11.5.1. **Cumulative Rights.** All covenants, conditions, provisions, warranties, guaranties, indemnities and other undertakings of the Loan Parties contained in the Loan Documents are cumulative and not in derogation or substitution of each other. In particular, the rights and remedies of the Administrative Agent and the Lenders are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and shall not be exclusive of any other rights or remedies that the Administrative Agent and the Lenders may have, whether under any agreement, by law, at equity or otherwise.

11.5.2. **Waivers.** The failure or delay of any party hereto to require strict performance by any other party thereto with any terms of the Loan Documents, or to exercise any rights or remedies with respect to Collateral or otherwise, shall not operate as a waiver thereof nor as establishment of a course of dealing. All rights and remedies shall continue in full force and effect until the Full Payment of all Obligations. No modification of any terms of any Loan Documents (including any waiver thereof) shall be effective, unless such modification is specifically provided in a writing directed to the Borrowers and executed by the Borrowers and the Administrative Agent or the requisite Lenders, and such modification shall be applicable only to the matter specified. No waiver of any Default or Event of Default shall constitute a waiver of any other Default or Event of Default that may exist at such time,

unless expressly stated. If the Administrative Agent or any Lender accepts performance by any Loan Party under any Loan Documents in a manner other than that specified therein, or during any Default or Event of Default, or if the Administrative Agent or any Lender shall delay or exercise any right or remedy under any Loan Documents, such acceptance, delay or exercise shall not operate to waive any Default or Event of Default nor to preclude exercise of any other right or remedy.

11.6. Judgment Currency. If, for the purpose of obtaining judgment in any court or obtaining an order enforcing a judgment, it becomes necessary to convert any amount due under this Agreement in Dollars or in any other currency (hereinafter in this **Section 11.6** called the first currency) into any other currency (hereinafter in this **Section 11.6** called the second currency), then the conversion shall be made at Bank of America s spot rate of exchange for buying the first currency with the second currency prevailing at the Administrative Agent s close of business on the Business Day next preceding the day on which the judgment is given or (as the case may be) the order is made. Any payment made to the Administrative Agent or any Lender pursuant to this Agreement in the second currency shall constitute a discharge of the obligations of the Borrowers to pay to the Administrative Agent and the Lenders any amount originally due to the Administrative Agent and the Lenders in the first currency under this Agreement only to the extent of the amount of the first currency which the Administrative Agent and each of the Lenders is able, on the date of the receipt by it of such payment in any second currency, to purchase, in accordance with the Administrative Agent s and such Lender s normal banking procedures, with the amount of such second currency so received. If the amount of the first currency falls short of the amount originally due to the Administrative Agent and the Lenders in the first currency under this Agreement, each of the Borrowers, with respect to itself and its Subsidiaries, agrees that it will indemnify the Administrative Agent and each of the Lenders against and save the Administrative Agent and each of the Lenders harmless from any shortfall so arising. This indemnity shall constitute an obligation of each such Borrower separate and independent from the other obligations contained in this Agreement, shall give rise to a separate and independent cause of action and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum or sums in respect of amounts due to the Administrative Agent or any Lender under this Agreement or under any such judgment or order. Any such shortfall shall be deemed to constitute a loss suffered by the Administrative Agent and each such Lender, as the case may be, and the Borrowers shall not be entitled to require any proof or evidence of any actual loss. The covenant contained in this **Section 11.6** shall survive the Full Payment of the Obligations.

SECTION 12. THE ADMINISTRATIVE AGENT

12.1. Appointment, Authority and Duties of the Administrative Agent

12.1.1. **Appointment and Authority of the Administrative Agent**.

(a) Each Lender appoints and designates GB as the Administrative Agent hereunder. The Administrative Agent may, and each Lender authorizes the Administrative Agent to, enter into all Loan Documents (including, without limitation, the Intercreditor Agreement) to which the Administrative Agent is intended to be a party and accept all Security Documents, for the Administrative Agent s benefit and the benefit of the Secured Parties. Each Lender agrees that any action taken by the Administrative Agent or the Required Lenders, in accordance with the provisions of the Loan Documents, and the exercise by the Administrative Agent or the Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized and binding upon all Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as the Administrative Agent each Loan Document to which it is intended to be a party, including any intercreditor or subordination agreement, and accept delivery of each Loan

Document from any Loan Party or other Person; (c) act as collateral agent for the Secured Parties for purposes of perfecting and administering Liens under the Loan Documents and all other matters concerning Collateral of the US Loan Parties and the Non-Canadian Loan Parties and Collateral of the Canadian Loan Parties situated in the United States, and for all other purposes stated therein; and (d) exercise all rights and remedies given to the Administrative Agent with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. The duties of the Administrative Agent shall be ministerial and administrative in nature, and the Administrative Agent shall not have a fiduciary relationship with any Lender, Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto. The Administrative Agent alone shall be authorized to determine whether any Account or Inventory constitutes Eligible Inventory, Eligible Major Credit Card Receivables or Eligible Private Label and Corporate Accounts, as the case may be, or whether to impose or release any reserve, which determinations and judgments, if exercised in good faith, shall exonerate the Administrative Agent from liability to any Lender or other Person for any error in judgment.

(b) [Reserved.]

(c) For the purposes of the grant of security under the laws of the Province of Québec which may now or in the future be required to be provided by any Loan Party, the Administrative Agent is hereby irrevocably authorized and appointed to act as the holder of an irrevocable power of attorney (*fondé de pouvoir*) (within the meaning of Article 2692 of the *Civil Code of Quebec*) in order to hold any hypothec granted under the laws of the Province of Québec as security for any debenture, bond or other title of indebtedness that may be issued by any such Loan Party pursuant to a deed of hypothec and to exercise such rights and duties as are conferred upon a *fondé de pouvoir* under the relevant deed of hypothec and Applicable Laws (with the power to delegate any such rights or duties). Moreover, in respect of any pledge by any such Loan Party of any such debenture, bond or other title of indebtedness as security for any Obligations, the Administrative Agent shall also be authorized to hold such debenture, bond or other title of indebtedness as agent and pledgee for its own account and for the benefit of all Secured Parties**,** the whole notwithstanding the provisions of Section 32 of *An Act respecting the Special Powers of Legal Persons* (Quebec). The execution prior to the date hereof by the Administrative Agent, acting as the holder of an irrevocable power of attorney (*fondé de pouvoir*), of any deed of hypothec or other security documents made pursuant to the laws of the Province of Quebec, is hereby ratified and confirmed. Any person who becomes a Lender or successor Administrative Agent shall be deemed to have consented to and ratified the foregoing appointment of the Administrative Agent as *fondé de pouvoir*, agent and mandatary on behalf of all Secured Parties, including such person as a Secured Party. For greater certainty, the Administrative Agent, acting as the holder of an irrevocable power of attorney (*fondé de pouvoir*), shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favour of the Administrative Agent in this Agreement, which shall apply *mutatis mutandis*. In the event of the resignation and appointment of a successor Administrative Agent, such successor Administrative Agent shall also act as the holder of an irrevocable power of attorney (*fondé de pouvoir*).

(d) The relationship between the Administrative Agent and each of the other Secured Parties is that of an independent contractor. The use of the term Administrative Agent is for convenience only and is used to describe, as a form of convention, the independent contractual relationship between the Administrative Agent and each of the other Secured Parties. Nothing contained in this Agreement nor the other Loan Documents shall be construed to create an agency, trust or other fiduciary relationship between the Administrative Agent and any of the other Secured Parties.

(e) As an independent contractor empowered by the Secured Parties to exercise certain rights and perform certain duties and responsibilities hereunder and under the other Loan Documents, the Administrative Agent is nevertheless a representative of

the Secured Parties, as that term is defined in Article 1 of the Uniform Commercial Code, for purposes of actions for the benefit of the Lenders and the Administrative Agent with respect to all collateral security and guaranties contemplated by the Loan Documents. Such actions include the designation of the Administrative Agent as secured party, mortgagee or the like on all financing statements and other documents and instruments, whether recorded, filed, registered or otherwise, relating to the attachment, perfection, enforceability, priority or enforcement of any security interests, mortgages, hypothecs or deeds of trust in collateral security intended to secure the payment or performance of any of the Obligations, all for the benefit of the Secured Parties.

12.1.2. **Duties.** The Administrative Agent shall not have any duties except those expressly set forth in the Loan Documents, nor be required to initiate or conduct any Enforcement Action except to the extent directed to do so by the Required Lenders while an Event of Default exists. The conferral upon the Administrative Agent of any right shall not imply a duty on the Administrative Agent s part to exercise such right, unless instructed to do so by the Required Lenders in accordance with this Agreement.

12.1.3. **Agent Professionals.** The Administrative Agent may perform its duties through agents and employees. The Administrative Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

12.1.4. **Instructions of the Required Lenders.** The rights and remedies conferred upon the Administrative Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. The Administrative Agent may request instructions from the Required Lenders with respect to any act (including the failure to act) in connection with any Loan Documents, and may seek assurances to its satisfaction from the Lenders of their indemnification obligations under **Section 12.6** against all Claims that could be incurred by the Administrative Agent in connection with any act. The Administrative Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and the Administrative Agent shall not incur liability to any Person by reason of so refraining. Instructions of the Required Lenders shall be binding upon all Lenders, and no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting in accordance with the instructions of the Required Lenders. Notwithstanding the foregoing, instructions by and consent of all Lenders shall be required in the circumstances described in **Section 14.1.1**, and in no event shall, and in no event shall the Required Lenders, without the prior written consent of each Lender, direct the Administrative Agent to accelerate and demand payment of any portion of the Term Loan held by one Lender without accelerating and demanding payment of the Term Loan in its entirety. In no event shall the Administrative Agent be required to take any action that, in its opinion, is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to personal liability.

12.2. Agreements Regarding Collateral and Field Examination Reports.

12.2.1. **Lien Releases; Care of Collateral.** The Lenders authorize the Administrative Agent to release any Lien with respect to any Collateral (a) upon the occurrence of the Full Payment of the Obligations, (b) that is the subject of a disposition which is permitted under this Agreement (including under **Section 10.2.13**) or a Lien which is a Permitted Lien entitled to priority over the Administrative Agent s Liens, (c) that does not constitute a material part of the Collateral, or (d) with the written consent of all Lenders. The Administrative Agent shall not have any obligation whatsoever to any Lenders to assure that any Collateral exists or is

owned by a Loan Party, or is cared for, protected, insured or encumbered, nor to assure that the Administrative Agent s Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

12.2.2. **Possession of Collateral.** The Administrative Agent and the Lenders appoint the Administrative Agent and each other Lender as agent for the purpose of perfecting Liens (for the benefit of the Secured Parties) in any Collateral that, under the UCC, PPSA or other Applicable Law, can be perfected by possession. If any Lender obtains possession of any such Collateral, it shall notify the Administrative Agent thereof and, promptly upon the Administrative Agent s request, deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent s instructions or as required by the Intercreditor Agreement.

12.2.3. **Reports.** The Administrative Agent shall promptly, upon receipt thereof, forward to each Lender copies of the results of any field audit or other examination or any appraisal prepared by or on behalf of the Administrative Agent with respect to any Loan Party or Collateral (Report). Each Lender agrees (a) that neither GB nor the Administrative Agent makes any representation or warranty as to the accuracy or completeness of any Report, and shall not be liable for any information contained in or omitted from any Report; (b) that the Reports are not intended to be comprehensive audits or examinations, and that the Administrative Agent or any other Person performing any audit or examination will inspect only specific information regarding Obligations or the Collateral and will rely significantly upon the Loan Parties books and records as well as upon representations of the Loan Parties officers and employees; and (c) to keep all Reports confidential and strictly for such Lender s internal use, and not to distribute any Report (or the contents thereof) to any Person (except to such Lender s Participants, attorneys and accountants) or use any Report in any manner other than administration of the Term Loan and other Obligations. Each Lender agrees to indemnify and hold harmless the Administrative Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Report, as well as any Claims arising in connection with any third parties that obtain all or any part of a Report through such Lender, provided that no Lender shall have any obligation to indemnify and hold harmless such other Person preparing a Report for any claims arising that are determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such other Person preparing such Report.

12.3. Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy, electronic transmission or e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and upon the advice and statements of the Agent Professionals.

12.4. Action Upon Default. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless it has received written notice from a Lender or the Borrower specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default or Event of Default, it shall promptly notify the Administrative Agent and the other Lenders thereof in writing. Each Lender agrees that, except as otherwise provided in any Loan Documents or with the written consent of the Administrative Agent and the Required Lenders, it will not take any Enforcement Action, accelerate its Obligations, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral. Notwithstanding the foregoing, however, a Lender may take action to preserve or enforce its rights against a Loan Party where a deadline or limitation period is applicable that would, absent such action, bar enforcement of Obligations held by such Lender, including the filing of proofs of claim in an Insolvency Proceeding.

12.5. Ratable Sharing. If any Lender shall obtain any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its share of such Obligation, determined on a Pro Rata basis or in accordance with **Section 5.5**, as applicable, such Lender shall forthwith purchase from the Administrative Agent and the other applicable Lenders such participations in the affected Obligation as are necessary to cause the purchasing Lender to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.5**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

12.6. Indemnification of the Agent Indemnitees.

12.6.1. **INDEMNIFICATION.** EACH LENDER SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY THE LOAN PARTIES (BUT WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS OF LOAN PARTIES UNDER ANY LOAN DOCUMENTS), ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY AGENT INDEMNITEE; PROVIDED THAT NO LENDER SHALL HAVE ANY OBLIGATION TO INDEMNIFY OR HOLD HARMLESS THE AGENT INDEMNITEES FOR ANY CLAIM THAT IS DETERMINED IN A FINAL, NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO RESULT FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY AGENT INDEMNITEE. If the Administrative Agent is sued by any receiver, trustee in bankruptcy, debtor-in-possession or other Person for any alleged preference from a Loan Party or fraudulent transfer, then any monies paid by the Administrative Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys fees) incurred in the defense of same, shall be promptly reimbursed to the Administrative Agent by the Lenders to the extent of each Lender s Pro Rata share.

12.6.2. **Proceedings.** Without limiting the generality of the foregoing, if at any time (whether prior to or after the Termination Date) any proceeding is brought against any Agent Indemnitees by a Loan Party, or any Person claiming through a Loan Party, to recover damages for any act taken or omitted by the Administrative Agent in connection with any Obligations, Collateral, Loan Documents or matters relating thereto, or otherwise to obtain any other relief of any kind on account of any transaction relating to any Loan Documents, each Lender agrees to indemnify and hold harmless the Agent Indemnitees with respect thereto and to pay to the Agent Indemnitees such Lender s Pro Rata share of any amount that any Agent Indemnitee is required to pay under any judgment or other order entered in such proceeding or by reason of any settlement, including all interest, costs and expenses (including attorneys fees) incurred in defending same; provided that no Lender shall be liable for payment of any such amount to the extent that it is determined in a final, non-appealable judgment by a court of competent jurisdiction that such judgment, order or settlement resulted from any Agent Indemnitees gross negligence or willful misconduct. In the Administrative Agent s discretion, the Administrative Agent may reserve for any such proceeding, and may satisfy any judgment, order or settlement, from proceeds of Collateral prior to making any distributions of Collateral proceeds to the Lenders provided that it has not been determined in a final, non-appealable judgment by a court of competent jurisdiction that such judgment, order or settlement resulted from any Agent Indemnitees gross negligence or willful misconduct.

12.7. Limitation on Responsibilities of the Administrative Agent. The Administrative Agent shall not be liable to the Lenders for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by the

Administrative Agent s gross negligence or willful misconduct. The Administrative Agent does not assume any responsibility for any failure or delay in performance or any breach by any Loan Party or Lender of any obligations under the Loan Documents. The Administrative Agent does not make to the Lenders any express or implied warranty, representation or guarantee with respect to any Obligations, Collateral, Loan Documents or Loan Party. No Agent Indemnitee shall be responsible to the Lenders for any recitals, statements, information, representations or warranties contained in any Loan Documents; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectibility, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectibility of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Loan Party or Account Debtor. No Agent Indemnitee shall have any obligation to any Lender to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any Loan Party of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

12.8. Successor Administrative Agent.

12.8.1. **Resignation; Successor Administrative Agent.** Subject to the appointment and acceptance of a successor Administrative Agent as provided below, the Administrative Agent may resign at any time by giving at least 30 days written notice thereof to the Lenders and the Borrowers. Upon receipt of such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent, which shall be (a) a Lender or an Affiliate of a Lender; or (b) a commercial bank with an office in the United States or Canada, as applicable, that, unless a Default or Event of Default exists, is reasonably acceptable to the Borrower Agent. If no successor agent is appointed prior to the effective date of the resignation of the Administrative Agent, then the Administrative Agent may appoint a successor agent from among the Lenders. Upon acceptance by a successor Administrative Agent of an appointment to serve as Administrative Agent hereunder, such successor Administrative Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Administrative Agent, without further act, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder but shall continue to have the benefits of the indemnification set forth in **Sections 12.6** and **14.2**. Notwithstanding the Administrative Agent s resignation, the provisions of this **Section 12** shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it in such capacity. Any successor by merger or acquisition of the stock or assets of GB shall continue to be the Administrative Agent hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above.

12.8.2. **Separate Agent.** It is the intent of the parties that there shall be no violation of any Applicable Law denying or restricting the right of financial institutions to transact business in any jurisdiction. If the Administrative Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any Applicable Law, the Administrative Agent may appoint an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If the Administrative Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to the Administrative Agent under the Loan Documents shall also be vested in such separate agent. Every covenant and obligation necessary to the exercise thereof by such agent shall run to and be enforceable by it as well as the Administrative Agent. The Lenders shall execute and deliver such documents as the Administrative Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by the Administrative Agent until appointment of a new agent.

12.9. Due Diligence and Non-Reliance. Each Lender acknowledges and agrees that it has, independently and without reliance upon the Administrative Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Loan Party and its own decision to enter into this Agreement and to fund its Pro Rata share of the Term Loan. Each Lender has made such inquiries concerning the Loan Documents, the Collateral and each Loan Party as such Lender feels necessary. Each Lender further acknowledges and agrees that the other Lenders and the Administrative Agent have made no representations or warranties concerning any Loan Party, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Lender will, independently and without reliance upon the other Lenders or the Administrative Agent, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making its Pro Rata share of the Term Loan and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, the Administrative Agent shall have no duty or responsibility to provide any Lender with any notices, reports or certificates furnished to the Administrative Agent by any Loan Party or any credit or other information concerning the affairs, financial condition, business or Properties of any Loan Party (or any of its Affiliates) which may come into possession of the Administrative Agent or any of the Administrative Agent s Affiliates.

12.10. Replacement of Certain Lenders. In the event that any Lender (a) fails to fund its Pro Rata share of the Term Loan, and such failure is not cured within two Business Days, (b) defaults in performing any of its obligations under the Loan Documents, or (c) fails to give its consent to any amendment, waiver or action for which consent of all Lenders was required and the Required Lenders consented, then, in addition to any other rights and remedies that any Person may have, the Administrative Agent may, by notice to such Lender within 120 days after such event, require such Lender to assign all of its rights and obligations under the Loan Documents to Eligible Assignee(s) specified by the Administrative Agent, pursuant to appropriate Assignment and Assumption Agreement(s) and within 20 days after the Administrative Agent s notice. The Administrative Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment and Assumption Agreement if the Lender fails to execute same. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents, including all principal, interest and fees through the date of assignment (but excluding any prepayment charge).

12.11. Remittance of Payments and Collections.

12.11.1. **Remittances Generally.** All payments by any Lender to the Administrative Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by the Administrative Agent and request for payment is made by the Administrative Agent by 11:00 a.m. on a Business Day, payment shall be made by the Lender not later than 2:00 p.m. on such day, and if request is made after 11:00 a.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by the Administrative Agent to any Lender shall be made by wire transfer, in the type of funds received by the Administrative Agent. Any such payment shall be subject to the Administrative Agent s right of offset for any amounts due from such Lender under the Loan Documents.

12.11.2. **Failure to Pay.** If any Lender fails to pay any amount when due by it to the Administrative Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate determined by the Administrative Agent as customary in the banking industry for interbank compensation. In no event shall the Borrowers be entitled to receive credit for any interest paid by a Lender to the Administrative Agent.

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

12.12. GB in its Individual Capacity. As Lenders, GB and its Affiliates shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms Lenders, Required Lenders, or any similar term shall include GB and its Affiliates in their capacity as Lenders. Each of GB and its Affiliates may accept deposits from, maintain deposits or credit balances for, invest in, lend money to, act as trustee under indentures of, serve as financial or other advisor to, and generally engage in any kind of business with, the Loan Parties and their Affiliates, as if GB and such Affiliates were any other bank, without any duty to account therefor (including any fees or other consideration received in connection therewith) to the other Lenders. In its individual capacity, each of GB and its Affiliates may receive information regarding the Loan Parties, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Lender agrees that each of GB and its Affiliates shall be under no obligation to provide such information to the Lenders, if acquired in such individual capacity and not as Administrative Agent hereunder.

12.13. Agent Titles. Each Lender (if any), other than GB, that is designated (on the cover page of this Agreement or otherwise) by GB as an Agent of any type shall not have any right, power, responsibility or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event be deemed to have any fiduciary relationship with any other Lender.

12.14. No Third Party Beneficiaries. This **Section 12** is an agreement solely among Lenders and the Administrative Agent, and does not confer any rights or benefits upon the Loan Parties or any other Person. As between the Loan Parties and the Administrative Agent, any action that the Administrative Agent may take under any Loan Documents shall be conclusively presumed to have been authorized and directed by the Lenders as herein provided.

12.15. Loan Documents; Intercreditor Agreement. Each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto. Without limiting the generality of the foregoing, the Lenders hereby irrevocably authorize the Administrative Agent (or any of them) to enter into the Intercreditor Agreement and agree to be bound by the provisions thereof.

SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS AND PARTICIPATIONS

13.1. Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (a) to an Eligible Assignee in accordance with the provisions of **Section 13.2**, (b) by way of participation in accordance with the provisions of **Sections 13.5 and 13.6**, or

(iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 13.7** (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Sections 13.5** and **13.6** and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

13.2. Assignments by Lenders. Subject to **Section 13.3**, any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Pro Rata share of the Term Loan at the time owing to it); provided that

(a) except in the case of an assignment of the entire remaining amount of the assigning Lender s Pro Rata share of the Term Loan at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the principal outstanding balance of the assigning Lender s Pro Rata share of the Term Loan subject to each such assignment, determined as of the date set forth in the Assignment and Assumption Agreement with respect to such assignment is delivered to the Administrative Agent or, if Trade Date is specified in the Assignment and Assumption Agreement, as of the Trade Date, shall not be less than the Dollar Equivalent of $2,500,000 unless the Administrative Agent otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender s rights and obligations under this Agreement with respect to the portion of the Term Loan assigned (it being understood that non-pro rata assignments of such portion of the Term Loan are not permitted);

(c) any assignment of portion of the Term Loan must be approved by the Administrative Agent unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and

(d) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption Agreement, together with a processing and recordation fee in the amount of $3,500, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire in the Administrative Agent s customary form; provided that if such Eligible Assignee is an Approved Fund of a Lender, no processing and recordation fee shall be required.

From and after the effective date specified in each Assignment and Assumption Agreement, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender s rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Sections 3.4, 3.7, 5.8, 5.9** and **14.2** with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the applicable Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations

under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Sections 13.5** and **13.6**.

13.3. [Reserved.]

13.4. Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Administrative Agent s office a copy of each Assignment and Assumption Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Lenders Pro Rata shares of the Term Loan owing to, each Lender pursuant to the terms hereof from time to time (the Register). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by each of the Borrowers at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

13.5. Participations.

(a) Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than a natural person or any Borrower or any of the Borrower s Affiliates or Subsidiaries) (each, a Participant) in all or a portion of such Lender s rights and/or obligations under this Agreement (including all or a portion of a Lender s Pro Rata share of the Term Loan owing to it); provided that (i) each such participation shall be in an amount of not less than the Dollar Equivalent of $10,000,000, (ii) such Lender s obligations under this Agreement shall remain unchanged, (iii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iv) the Borrowers, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender s rights and obligations under this Agreement.

(b) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification that would reduce the principal of or the interest rate on any portion of the Term Loan, extend the term or increase such Lender s Pro Rata share of the Term Loan as it relates to such Participant, or extend any regularly scheduled payment date for principal or interest. Subject to **Section 13.6**, the Loan Parties agree that each Participant shall be entitled to the benefits of **Sections 5.8** and **5.9** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 13.2**. To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of **Section 11.4** as though it were a Lender, provided such Participant agrees to be subject to **Section 5.5** as though it were a Lender.

13.6. Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under **Section 5.8** or **5.9** 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 Borrowers 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 5.9** unless the Borrowers are notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with **Section 5.9** as though it were a Lender.

13.7. Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

13.8. Electronic Execution of Assignments. The words execution, signed, signature, and words of like import in any Assignment and Acceptance Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

13.9. Tax Treatment. If any interest in a Loan Document is transferred to a Transferee that is organized under the laws of any jurisdiction other than the United States or any state or district thereof, the transferor Lender shall cause such Transferee, concurrently with the effectiveness of such transfer, to comply with the provisions of **Section 5.9**.

13.10. Representation of the Lenders. Each Lender represents and warrants to each Borrower, the Administrative Agent and other Lenders that none of the consideration used by it to fund its Pro Rata share of the Term Loan or to participate in any other transactions under this Agreement constitutes for any purpose of ERISA or Section 4975 of the Code assets of any plan as defined in Section 3(3) of ERISA or Section 4975 of the Code and the interests of such Lender in and under the Loan Documents shall not constitute plan assets under ERISA.

13.11. Assignment by the Loan Parties. The Loan Parties shall not assign or transfer any of their rights or obligations under any of the Loan Documents without the prior written consent of the Administrative Agent and each of the Lenders.

SECTION 14. MISCELLANEOUS

14.1. Consents, Amendments and Waivers.

14.1.1. **Amendment.** No modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of the Administrative Agent, with the consent of the Required Lenders, and each Loan Party party to such Loan Document; provided, however, that

(a) without the prior written consent of the Administrative Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties or discretion of the Administrative Agent;

(b) **[Reserved.]**;

(c) without the prior written consent of each affected Lender, no modification shall be effective that would (i) increase such Lender s Pro Rata share of the Term Loan; (ii) reduce the amount of, or waive, postpone or delay payment of, any principal, interest, fees or other amounts payable to such Lender (it being understood that only the consent of the Required Lenders shall be necessary to amend the definition of Default Rate or waive any obligation of the Borrowers to pay interest at the Default Rate); (iii) amend the

definition of Term Loan Borrowing Capacity (and the defined terms used, directly or indirectly, in such definition) or Pro Rata; or (iv) increase any advance rate *(it being understood, however*, that clauses (iii) and (iv) above shall not (x) limit the adjustment by the Administrative Agent of the Availability Reserve in the Administrative Agent s administration of the Term Loan as otherwise permitted by this Agreement or (y) prevent the Administrative Agent, in its administration of the Term Loan, from restoring any component of the Term Loan Borrowing Capacity which had been lowered by the Administrative Agent back to the value of such component, as stated in this Agreement or to an intermediate value);

(d) change any provision of this **Section 14.1** or the definition of Required Lenders without the written consent of each Lender; and

(e) without the prior written consent of all Lenders (except a Defaulting Lender), no modification shall be effective that would (i) extend the Maturity Date; (ii) alter **Section 5.5, Section 7** or **Section 14.1.1**; (iii) release all or substantially all of the Collateral (excluding, if any Loan Party or any Subsidiary of any Loan Party becomes a debtor under the federal Bankruptcy Code, the release of cash collateral , as defined in Section 363(a) of the federal Bankruptcy Code pursuant to a cash collateral stipulation with the debtor approved by the Required Lenders); or (iv) release all or substantially all of the value of the Guaranties.

14.1.2. **Limitations.** The agreement of the Loan Parties shall not be necessary to the effectiveness of any modification of a Loan Document that deals solely with the rights and duties of the Lenders and/or the Administrative Agent as among themselves. Any waiver or consent granted by the Lenders hereunder shall be effective only if in writing, and then only in the specific instance and for the specific purpose for which it is given.

14.1.3. **Payment for Consents.** No Loan Party will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

14.2. Indemnity. EACH LOAN PARTY SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, PROCEEDINGS, COSTS AND EXPENSES OF ANY KIND (INCLUDING REMEDIAL RESPONSE COSTS, REASONABLE ATTORNEYS FEES AND EXTRAORDINARY EXPENSES) AT ANY TIME (INCLUDING AFTER FULL PAYMENT OF THE OBLIGATIONS, RESIGNATION OR REPLACEMENT OF THE ADMINISTRATIVE AGENT, OR REPLACEMENT OF ANY LENDER) INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE IN ANY WAY RELATING TO (A) ANY LOAN DOCUMENTS OR TRANSACTIONS RELATING THERETO, (B) ANY ACTION TAKEN OR OMITTED TO BE TAKEN BY ANY INDEMNITEE IN CONNECTION WITH ANY LOAN DOCUMENTS, (C) THE EXISTENCE OR PERFECTION OF ANY LIENS, OR REALIZATION UPON ANY COLLATERAL, (D) EXERCISE OF ANY RIGHTS OR REMEDIES UNDER ANY LOAN DOCUMENTS OR APPLICABLE LAW, (E) FAILURE BY ANY LOAN PARTY TO PERFORM OR OBSERVE ANY TERMS OF ANY LOAN DOCUMENT, IN EACH CASE INCLUDING ALL COSTS AND EXPENSES RELATING TO ANY INVESTIGATION, LITIGATION, ARBITRATION OR OTHER PROCEEDING (INCLUDING AN INSOLVENCY PROCEEDING OR APPELLATE PROCEEDINGS), WHETHER OR NOT THE APPLICABLE INDEMNITEE IS A PARTY THERETO, (F) THE TERM LOAN OR THE USE OR PROPOSED USE OF THE PROCEEDS THEREFROM, (G) ANY ACTUAL OR ALLEGED ENVIRONMENTAL RELEASE ON OR FROM ANY PROPERTY OWNED OR OPERATED BY ANY

BORROWER OR ANY OF ITS SUBSIDIARIES, OR ANY LIABILITY IN CONNECTION WITH ANY ACTUAL OR ALLEGED VIOLATION OF ANY ENVIRONMENTAL LAW RELATED IN ANY WAY TO ANY LOAN PARTY OR ANY OF ITS SUBSIDIARIES, OR (H) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY, WHETHER BROUGHT BY A THIRD PARTY OR BY A BORROWER OR ANY OTHER LOAN PARTY (HEREINAFTER, CLAIMS) THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE. In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a Claim that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee.

14.3. Notices and Communications.

14.3.1. **Notice Address.** All notices, requests and other communications by or to a party hereto shall be in writing and shall be given to any Loan Party, at the Borrower Agent s address shown on the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment and Assumption Agreement), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. Each such notice, request or other communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the mail, with first-class postage pre-paid, addressed to the applicable address; or (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged. Any written notice, request or other communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by the Borrower Agent shall be deemed received by all Loan Parties.

14.3.2. **Electronic Communications; Voice Mail.** Electronic mail and internet websites may be used only for routine communications, such as financial statements, Borrowing Base Certificates and other information required by **Section 10.1.2**, administrative matters, and distribution of Loan Documents for execution. The Administrative Agent and the Lenders make no assurances as to the privacy and security of electronic communications. Electronic and voice mail may not be used as effective notice under the Loan Documents.

14.3.3. **Non-Conforming Communications.** The Administrative Agent and the Lenders may rely upon any notices purportedly given by or on behalf of any Borrower even if such notices were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Borrower shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any telephonic communication purportedly given by or on behalf of a Borrower.

14.4. Performance of the Borrowers Obligations. The Administrative Agent may, in its discretion at any time and from time to time after the occurrence, and during the continuance, of an Event of Default, at the Borrowers expense, pay any amount or do any act required of a Borrower under any Loan Documents or otherwise lawfully requested by the Administrative Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of the Administrative Agent s Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All payments, costs and

expenses (including Extraordinary Expenses) of the Administrative Agent under this **Section 14.4** shall be reimbursed to the Administrative Agent by the Borrowers, **on demand**, with interest from the date incurred to the date of payment thereof at the Default Rate applicable to the Term Loan. Any payment made or action taken by the Administrative Agent under this **Section 14.4** shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

14.5. Credit Inquiries. Each Loan Party hereby authorizes the Administrative Agent and the Lenders (but they shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Loan Party or any Subsidiary.

14.6. Severability. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

14.7. Cumulative Effect; Conflict of Terms. The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise specifically provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

14.8. Counterparts; Facsimile and Electronic Signatures. Any Loan Document may be executed in counterparts, each of which taken together shall constitute one instrument. Loan Documents may be executed and delivered by facsimile or electronic communication, and they shall have the same force and effect as manually signed originals. The Administrative Agent may require confirmation by a manually-signed original, but failure to request or deliver same shall not limit the effectiveness of any such facsimile signature or signature received by electronic communications.

14.9. Entire Agreement. Time is of the essence of the Loan Documents. The Loan Documents embody the entire understanding of the parties with respect to the subject matter thereof and supersede all prior understandings regarding the same subject matter.

14.10. Obligations of the Lenders. The obligations of each Lender hereunder are several, and no Lender shall be responsible for any other Lender s obligations or Pro Rata share of the Term Loan. Amounts payable hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled, to the extent not otherwise restricted hereunder, to protect and enforce its rights arising out of the Loan Documents. It shall not be necessary for the Administrative Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of the Administrative Agent or Lenders pursuant to the Loan Documents shall be deemed to constitute the Administrative Agent and the Lenders to be a partnership, association, joint venture or any other kind of entity, nor to constitute control of any Loan Party.

14.11. Confidentiality. The Lenders agree to maintain the confidentiality of any information that the Loan Parties deliver to the Administrative Agent and the Lenders, except that the Administrative Agent and any Lender may disclose such information (a) to their respective officers, directors, employees, Affiliates and agents, including legal counsel, auditors and other professional advisors; (b) to any party to the Loan Documents from time to time (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential); (c) pursuant to the

order of any court or administrative agency; (d) upon the request of any Governmental Authority exercising regulatory authority over the Administrative Agent or such Lender; (e) which ceases to be confidential, other than by an act or omission of the Administrative Agent or any Lender, or which becomes available to the Administrative Agent or any Lender on a nonconfidential basis; (f) to the extent reasonably required in connection with any litigation relating to any Loan Documents or transactions contemplated thereby, or otherwise as required by Applicable Law; (g) to the extent reasonably required for the exercise of any rights or remedies under the Loan Documents; (h) to any Transferee, as long as such Person agrees to be bound by the provisions of this **Section 14.11**; (i) to the National Association of Insurance Commissioners or any similar organization, or to any nationally recognized rating agency that requires access to information about a Lender s portfolio in connection with ratings issued with respect to such Lender; (j) to any investor or potential investor in an Approved Fund that is a Lender or Transferee, but solely for use by such investor to evaluate an investment in such Approved Fund, or to any manager, servicer or other Person in connection with its administration of any such Approved Fund (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential); or (k) with the consent of the Borrower Agent. Notwithstanding the foregoing, the Administrative Agent and the Lenders may issue and disseminate to the public general information describing this credit facility, including the names and addresses of the Loan Parties and a general description of the Loan Parties businesses, and may (so long as the Borrower Agent has previously reviewed and approved the form of such advertisement or promotional materials) use the Loan Parties names in advertising and other promotional materials.

14.12. GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS OTHERWISE SPECIFIED, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (EXCLUDING THE LAWS APPLICABLE TO CONFLICTS OR CHOICE OF LAW (OTHER THAN THE NEW YORK GENERAL OBLIGATIONS LAW §§5-1401 AND 5-1402)).

14.13. Consent to Forum.

EACH LOAN PARTY PARTY HERETO HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY FEDERAL COURT SITTING IN OR WITH JURISDICTION OVER THE SOUTHERN DISTRICT OF NEW YORK AND OF ANY STATE COURT OF THE STATE OF NEW YORK SITTING IN THE COUNTY OF MANHATTAN, IN ANY PROCEEDING OR DISPUTE RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY SUCH PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH LOAN PARTY PARTY HERETO IRREVOCABLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING SUCH COURT S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. Nothing herein shall limit the right of the Administrative Agent or any Lender to bring proceedings against any Loan Party in any other court. Nothing in this Agreement shall be deemed to preclude enforcement by the Administrative Agent of any judgment or order obtained in any forum or jurisdiction.

14.14. Waivers by the Loan Parties. To the fullest extent permitted by Applicable Law, each Loan Party party hereto waives (a) the right to trial by jury (which the Administrative Agent and each Lender hereby also waives) in any proceeding, claim or counterclaim of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by (i) the Control Agent, for the benefit of the Administrative Agent and the other Secured Parties, or (ii) the Administrative Agent or any other Secured Party, in each case on which a Borrower or such Loan Party may in any way be liable, and hereby ratifies anything the Control Agent, the

Administrative Agent or such other Secured Party may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing the Administrative Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisement and exemption laws; (f) any claim against the Administrative Agent or any Lender, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Loan Party hereto acknowledges that the foregoing waivers are a material inducement to the Administrative Agent and the Lenders entering into this Agreement and that the Administrative Agent and the Lenders are relying upon the foregoing in their dealings with the Borrowers and the other the Loan Parties. Each Loan Party has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

14.15. Patriot Act Notice. The Administrative Agent and the Lenders hereby notify the Borrowers and the other Loan Parties that pursuant to the requirements of the Patriot Act, the Administrative Agent and the Lenders are required to obtain, verify and record information that identifies each Loan Party, including its legal name, address, tax ID number and other information that will allow the Administrative Agent and the Lenders to identify it in accordance with the Patriot Act. The Administrative Agent and the Lenders will also require information regarding each personal guarantor, if any, and may require information regarding the Loan Parties management and owners, such as legal name, address, social security number and date of birth.

14.16. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any credit extension, and shall continue in full force and effect until Full Payment of the Obligations.

14.17. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Loan Parties acknowledges and agrees, and acknowledges its Affiliates understanding, that: (i) (A) the services regarding this Agreement provided by the Administrative Agent and the Lenders are arm s-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent and the Lenders, on the other hand, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Administrative Agent and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) none of the Administrative Agent nor any Lender has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Administrative Agent nor any Lender has any obligation to disclose any of such interests to the Loan Parties or any of their respective Affiliates. To the fullest extent permitted by

law, except in connection with the gross negligence and willful misconduct of the Administrative Agent, the Lenders or their respective Affiliates, each of the Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent or the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby. Each Loan Party acknowledges and agrees that in connection with all aspects of any transaction contemplated by the Loan Documents, Loan Parties, the Administrative Agent and Lenders have an arm s-length business relationship that creates no fiduciary duty on the part of the Administrative Agent or any Lender, and each Loan Party, the Administrative Agent and each Lender expressly disclaims any fiduciary relationship.

14.18. Intercreditor Agreement. The parties hereto acknowledge that the exercise of certain of the Administrative Agent s rights and remedies hereunder may be subject to, and restricted by, the provisions of the Intercreditor Agreement regarding intercreditor arrangements among the Administrative Agent, the Revolving Agent and the Canadian Revolving Agent. Notwithstanding the foregoing, each Loan Party expressly acknowledges and agrees that the Intercreditor Agreement is solely for the benefit of the parties thereto, and that notwithstanding the fact that the exercise of certain of the Administrative Agent s and Lenders rights under the Loan Documents may be subject to the Intercreditor Agreement, no action taken or not taken by the Administrative Agent or any Lender in accordance with the terms of the Intercreditor Agreement shall constitute, or be deemed to constitute, a waiver by the Administrative Agent or any Lender of any rights such Person has with respect to any Loan Party under any Loan Document and except as specified therein, nothing contained in the Intercreditor Agreement shall be deemed to modify any of the provisions of this Agreement and the other Loan Documents, which, as among the Loan Parties, the Administrative Agent and the Lenders, shall remain in full force and effect.

14.19. Language. The parties have requested that this Agreement and the other documents contemplated hereby or relating hereto be drawn up in the English language. *Les parties ont requis que cette convention ainsi que tous les documents qui y sont envisagés ou qui s y rapportent soient rédigés en langue anglaise.*

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as a sealed instrument as of the date first set forth above.

MAYOR S JEWELERS, INC., as US Borrower and as Borrower Agent

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: SVP and Chief Financial Officer

By: /s/ Marco Pasteris
Name: Marco Pasteris
Title: GVP, Finance & Treasurer

Notice Address:

c/o Birks & Mayors Inc.
1240 Phillips Square
Montreal, Quebec, Canada M3B 3H4
Attention: Group VP, Finance and Group VP, Legal Affairs
Telephone: (514) 397-2509
Telecopier: (514) 397-2537

Signature Page to Term Loan and Security Agreement

BIRKS & MAYORS INC., as Canadian Borrower

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: SVP and Chief Financial Officer

By: /s/ Marco Pasteris
Name: Marco Pasteris
Title: GVP, Finance & Treasurer

Notice Address:

c/o Birks & Mayors Inc.
1240 Phillips Square
Montreal, Quebec, Canada M3B 3H4
Attention: Group VP, Finance and Group VP, Legal Affairs
Telephone: (514) 397-2509
Telecopier: (514) 397-2537

Signature Page to Term Loan and Security Agreement

MAYOR S JEWELERS OF FLORIDA, INC.
JBM RETAIL COMPANY, INC.
JBM VENTURE CO., INC.
MAYOR S JEWELERS INTELLECTUAL PROPERTY HOLDING COMPANY
HENRY BIRKS & SONS U.S., INC.,

each as a Guarantor

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: SVP and Chief Financial Officer

By: /s/ Marco Pasteris
Name: Marco Pasteris
Title: GVP, Finance & Treasurer

Notice Address:

c/o Birks & Mayors Inc.
1240 Phillips Square
Montreal, Quebec, Canada M3B 3H4
Attention: Group VP, Finance and Group VP, Legal Affairs
Telephone: (514) 397-2509
Telecopier: (514) 397-2537

Signature Page to Term Loan and Security Agreement

GB MERCHANT PARTNERS, LLC, as Administrative Agent

By: D. Michael Murray
Name: D. Michael Murray
Title: Managing Director

Notice Address:

GB Merchant Partners, LLC
101 Huntington Avenue, 10th Floor
Boston, Massachusetts 02199
Attention: D. Michael Murray
Telephone: (617) 422-7845
Telecopier: (617) 210-7141
E-Mail: mmurray@gordonbrothers.com

Signature Page to Term Loan and Security Agreement

1903 ONSHORE FUNDING, LLC, as a Lender

By: GB Merchant Partners, LLC,
as Investment Manager

By: /s/ D. Michael Murray
Name: D. Michael Murray
Title: Managing Director

Notice Address:

1903 Onshore Funding, LLC
c/o GB Merchant Partners, LLC
101 Huntington Avenue, 10th Floor
Boston, Massachusetts 02199
Attention: D. Michael Murray
Telephone: (617) 422-7845
Telecopier: (617) 210-7141
E-Mail: mmurray@gordonbrothers.com

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Signature Page to Term Loan and Security Agreement

Exhibit 99.1

Company Contact:
Michael Rabinovitch
SVP & Chief Financial Officer
(954) 590-9000

BIRKS & MAYORS ANNOUNCES CLOSING OF AN AMENDMENT AND

EXTENSION OF ITS SENIOR SECURED REVOLVING CREDIT FACILITY

Montreal, Quebec. December 18, 2008- Birks & Mayors Inc. (the Company or Birks & Mayors) (AMEX:BMJ) today announced the closing of an amendment and extension of its senior secured revolving credit facility. The Company s $160 million senior secured revolving credit facility, which was set to expire on January 19, 2009, has been amended and extended to be in the amount of $135 million and will expire on December 17, 2011. In addition, the Company obtained a $13 million secured term loan that is subordinated to its senior secured revolving credit facility, also with a maturity date of December 17, 2011. These two credit facilities will primarily be used to finance inventory, capital expenditures, working capital and provide liquidity for other general corporate purposes.

We are very pleased to have finalized both credit facilities, especially in light of the current economic slow down and the tightening of the credit markets, said Tom Andruskevich, President and Chief Executive Officer.

Birks & Mayors is a leading operator of luxury jewelry stores in the United States and Canada. The Company currently operates 37 stores (Birks Brand) across most major metropolitan markets in Canada and 31 stores (Mayors Brand) across Florida and Georgia, as well as two retail locations in Calgary and Vancouver under the Brinkhaus brand. Birks was founded in 1879 and developed over the years into Canada s premier retailer, designer and manufacturer of fine jewelry, timepieces, sterling and plated silverware and gifts. Mayors was founded in 1910 and has maintained the intimacy of a family-owned boutique while becoming renowned for its fine jewelry, timepieces, giftware and service. Additional information can be found on Birks & Mayors web site, www.birksandmayors.com.

Information Concerning Forward-Looking Statements

This press release includes forward-looking statements, including the Company s expectations regarding liquidity and cash resources. These forward-looking statements may be affected by the risks and uncertainties in the Company s business. This information is qualified in its entirety by cautionary statements and risk factor disclosure contained in the Company s Securities and Exchange Commission filings, including the Company s Annual Report on Form 20-F filed with the Securities and Exchange Commission on June 30, 2008 and subsequent filings with the Securities and Exchange Commission. The Company wishes to caution readers that certain important factors may have affected and could in the future affect the Company s actual results and could cause the Company s actual results for subsequent periods to differ materially from those expressed in any forward-looking statement made by or on behalf of the Company. These factors include the ability of the Company to comply with the covenants in the senior secured

revolving credit facility and term loan and the future financial performance of the Company. The Company undertakes no obligation to update forward-looking statements to reflect events or circumstances after the date hereof.